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Understanding Statutory Time Frame Requirements under the RMA

What is a working day under the RMA?

A working day is defined in the Resource Management Act 1991 (RMA) as:

“working day means a day of the week other than—
(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, and Labour Day; and (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and (c) a day in the period commencing on 20 December in any year and ending with 10 January in the following year.”

What is an application’s first day?

The first statutory ‘working day’ for an application is the first full day the application is received by Council.

For example, if an application is lodged on a Monday after 5pm, the first statutory day will be the Tuesday. If an application is emailed to Council and received on Tuesday at 8am; the application is officially received and the statutory timeframe begins on the Tuesday. If an application is dropped off at council and received by the front desk on Monday during office hours the statutory timeframe starts on Monday.

How do I stop and start the clock?

If the clock is stopped at any time during the day, the entire day is not counted. If further information is received on a day and it includes all the information requested, then the clock starts again on that day.

For example if a further information request letter is sent by Council on Tuesday; the whole of Tuesday counts towards the statutory time frame of the application. If Council receives further information from the applicant on a Friday and it is all the information Council requested; the clock will start again on the Friday.

What is the last day of an application?

The clock does not stop when a decision is made on an application. The clock stops when the notice of decision is issued and sent (along with the decision itself) to the applicant as required under section 114. The Discount Regulations apply if the notice of decision is not given by the end of the relevant timeframe. To ensure that applicants receive their decision as soon as possible, notices are emailed. This practice also applies to notification decisions, information requests, and any other formal communication between the Council and the applicant.

Note: Although Council is required to serve the notice

of decision on other parties under section 114(2)(b) (for example, submitters), this step is outside of the statutory timeframe requirements. However, Council does adhere to best practice and sends the notice of decision to submitters and other relevant parties at the same time as the applicant.

When is a document considered to be received?

A document or piece of information is 'received' by the Council when it either physically arrives at Council or is received via email in the Council's RCinbox.

Time limits for processing applications

- Full Notification with a Hearing Held – 130 days
- Full Notification with no Hearing – 60 days
- Limited Notification with a Hearing Held – 100 days
- Limited Notification with no Hearing – 60 days
- Non-notified with a Hearing Held – 50 days
- Non-notified with no Hearing – 20 days
- Deemed Permitted Boundary Activity – 10 days
- Deemed permitted marginal or temporary activities – 10 days

Processing step time frames

Timeframes are not set out as one figure in the RMA but are calculated by relevant processing steps.

Full Notified Application with a Hearing Held:

- Section 95 – 20 working days to make the notification decision
- Section 97 – 20 working days for submissions
- Section 103A – 75 working days to complete the Hearing
- Section 115 – 15 working days for a decision to be issued
- Total – 130 working days**

Limited Notified Application with a Hearing Held:

- Section 95 – 20 working days to make the notification decision
- Section 97 – 20 workings for submissions
- Section 103A – 45 working days to complete the Hearing
- Section 115 – 15 working days to complete the Hearing
- Total – 100 days**

Notified or Limited Notified Application with No Hearing

- Section 95 – 20 working days to make the notification decision
- Section 97 – 20 working days for submissions

Section 115 – 20 working days for decision to be issued

Total – 60 days

Non-notified Applications with a Hearing Held

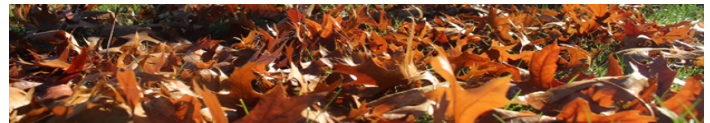
- Section 101(2) – 35 working days to commence the Hearing
- Hearing days excluded from statutory timeframe requirements
- Section 115 – 15 working days for a decision to be issued
- Total – 50 working days**

Non-notified Application with no Hearing

- Section 115 – 20 working days for decision to be issued
- Total – 20 working days**

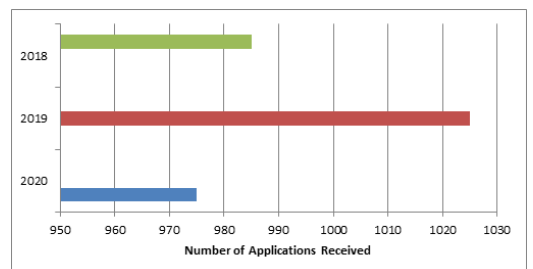
At the same time as the above process time frames Council is required to meet the following time frame:

Section 88(3) – 10 days to decide if an application is complete

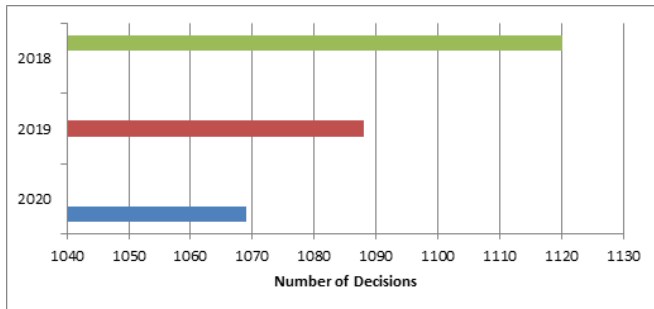


What happened in 2020?

Despite being impacted by the Covid-19 Lockdown and Levels Three and Two, the 2020 calendar year was relatively busy for the Resource Consent Team. Overall the number of applications received was only slightly less than the previous two years. During the 2020 calendar year Council received 975 applications. Of that total, 894 were new applications for resource consent. Council also received 73 applications for variations to resource consent conditions under section 127, 7 extensions to lapse date under section 125 and 2 objections to conditions under section 357. In the same period in 2019 Council received 1,025 applications and in 2018 Council received 985 applications.



In the 2020 calendar year Council issued 1,069 decisions. Of that total, 958 were for new applications for resource consent. Council also issued 104 section 127 decisions (variations to resource consent conditions) and 7 section 125 (extension to lapse date). In the same period in 2019 Council issued 1088 decisions and in 2018 Council issued 1120 decisions.



PMEP Appeals Update

Appeals on the proposed Marlborough Environment Plan are still progressing. Council started the process with 51 appeals lodged, four of which have already been resolved and, at the time of writing, six consent orders already issued.

The next step in the process is the commencement of formal, Environment Court-led, mediations. With the appointment of the lead mediators for Marlborough, Commissioner K Wilkinson and A Leijnen, the previously confirmed mediation schedule was set aside and new dates discussed. The Council has proposed a new schedule to the Court for their consideration. This schedule will see fewer days per week, which will ultimately lead to the mediation schedule being extended further than previously expected. With its experience of plan mediations, the Court pointed out that anything more would put a significant drain on resources and staffing for both Court and Council. All going well, mediations will commence in mid-March.

The discussions and information provided for the mediations are confidential to the parties and held on a without prejudice basis to ensure, among other things, conversations are open and candid. Any agreements that result from the mediations will be lodged with the Court in the form of a joint consent memorandum.

Through discussion with the parties, the Court directed mediations to be scheduled in a topic-based sequence. Generally speaking, Group 1 mediation topics consist of Section 6 RMA matters (matters

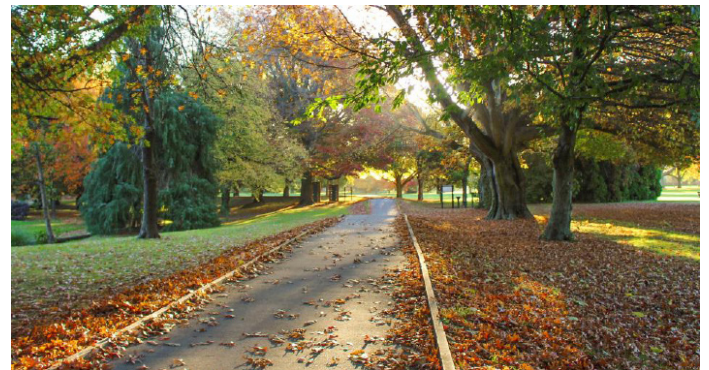
of national importance). Unsurprisingly, these are contentious and will take a larger amount of time than some of the other topic grouping — which are yet to be scheduled.

If you have an interest in the correspondence between Court and parties thus far, or simply would like to keep an eye on the progress of appeals, Council is updating their website on a regular basis with this information. Check out the 'Appeals on the PME' page which can currently be accessed via Council's main homepage.

The Court is yet to signal when hearings may commence, but this is not likely to occur before the completion of the mediations on the Group 1 topics.

When there is an agreement on an appeal point, a joint memorandum is lodged with the Court. If the Court is satisfied with the requested change to the PME, it will issue a consent order confirming the amendment to the plan. The 'Appeals Version of the PME' is updated with any consent orders as they are received. Where plan provisions are changed, the comments box on the right hand side will advise of the reason for it.

Want to know more? Have a look at the 'Case Management' section in the 'Appeals portal' to see what has been going on.



Aquaculture Variations – Variation 1 and 1A to the PME

When the Proposed Marlborough Environment Plan (PME) was notified in 2016, the aquaculture provisions were not included. At that stage a decision was made determining the provisions did not adequately give effect to the New Zealand Coastal Policy Statement and further review of these provisions would be required.

Process behind the Aquaculture Variations

The Marlborough Aquaculture Review Working Group (MARWG) was formed to assist with the review. The MARWG consisted of a mix of members from the marine farming industry, community organisations and central government agencies. The group met a total of 16 times between March 2017 and June 2019. During that time they considered both the provisions for insertion as well as the spatial extent of aquaculture in coastal waters of Marlborough. The recommendations provided by MARWG addressed provisions for Variation 1: Marine Farming.

A copy of the MARWG report is available from the Variations page of Council's website, under 'Background Information'.

Variation 1A: Finfish farming was not addressed by MARWG. For this variation, the Council relied on what it considered the most up to date information on finfish farming in the region, the Report and Recommendations of the Marlborough Salmon Farm Relocation Advisory Panel. This resource was used to determine the locations that constituted appropriate sites for finfish farming.

Perception Planning Limited, Council's consultants, drafted a RMA section 32 report for each of the variations. Section 32 reports, in simple terms, examine the proposed provisions and evaluate if they are the most appropriate means of achieving the purpose of the RMA and also provide a benefit/cost analysis. The Section 32 reports are also available in the background information section of the website.

Variation Provisions

A set of provisions were drafted for Variation 1 with supplementary provisions provided through Variation 1A. As part of both variations, spatial allocations were also provided. As mentioned earlier, MARWG considered the spatial extent of the existing marine farms in the coastal waters. This resulted in specific sites being identified as 'appropriate'. The appropriate spacing led to those sites being proposed to be either AMA (Aquaculture Management Areas), ASA (Aquaculture Settlement Areas) or FAMA (Finfish Aquaculture Management Areas). The coastal waters outside those mapped sites would become 'inappropriate' locations for aquaculture and would be subject to a prohibited

activity status, with the exception of aquaculture in the Open Waters CMU. The mapping of these sites is available via Council's Smart Maps.

One of the more notable mapping changes is the seaward shift of a majority of the marine farms into a coastal ribbon 100 – 300m off shore. There is a range of reasons for this change, a couple of which are the protection of the 'euphotic zone' and providing public access inshore of the farms. Have a read of the Section 32 reports if you want to know more.

National Environmental Standards Marine Aquaculture

If things weren't complicated enough, on 1 December 2020 the National Environmental Standards Marine Aquaculture (NESMA) came into force. NESMA deals with the management of existing marine aquaculture and, with a few exceptions, deems any future re-consenting of existing farms as a restricted discretionary activity. There is ability for Council to be more lenient in areas identified as 'appropriate' and more stringent in areas identified as 'inappropriate'. Council has elected to do this in both situations.

For the enclosed water and near-shore CMUs where the majority of farms currently reside, a basic interpretation would be, for existing farms that don't seek any change, re-consenting would have a controlled activity status. For coastal space outside of AMAs, these locations are considered inappropriate and a prohibited activity status would apply.

Notification and submissions

On 2 December 2020, the Marlborough District Council publicly notified Variation 1: Marine Farming and Variation 1A: Finfish Farming.

Submissions closed on Friday, 26 February 2021.

Council will process the submissions and produce a 'Summary of Submissions' report. The report will be publicly notified and an opportunity will then be provided to make further submissions on the submissions.

What's next?

Once further submissions close, Council will start working towards holding a hearing on the variations. Currently, no dates have been set down

Next Issue out 1 June 2021