



SEPTEMBER 2022

Welcome to our Spring Edition Newsletter

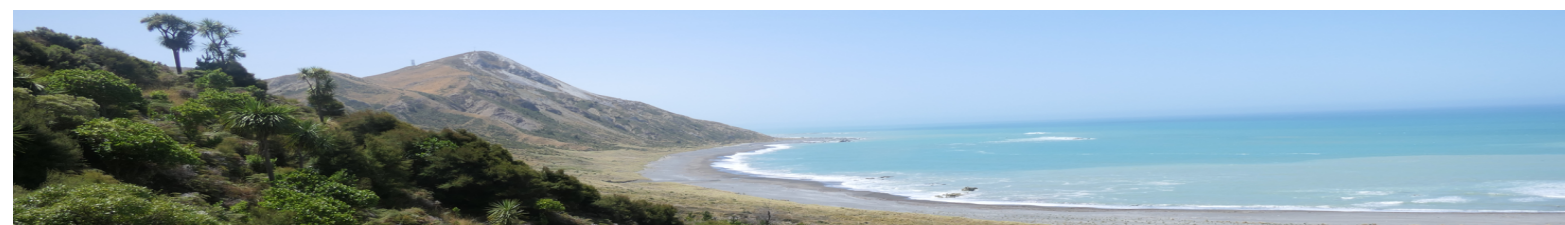
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This Resource Consent Team Newsletter provides information to assist those in the industry and their clients with respect to resource consent matters. It is not an exhaustive explanation of the matters that may be covered but a starting point for better 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.

Fewer applications being returned

Over the 2022/23 financial year 20 (2.1%) applications were returned under section 88. This compares to 16 (1.5%) returned in 2021/22 and 12 (1.2%) returned in 2020/21. When the new provisions were introduced by the Resource Management Amendment Act 2013 in 2015 up to 15% of applications were being returned due to being incomplete. The relatively low number of returned applications over the last three financial years indicates better educated applicants who are aware of the information they are required to provide with an application for resource consent. This can be partially attributed to the Duty Planner service and the Resource Consent Team communication strategy including the quarterly newsletter.



What to expect at a pre-hearing Meeting?

Pre-hearing meetings are encouraged as a means of progressing dialogue and understanding between all parties to a resource consent application that is heading towards a hearing. The purpose of a pre-hearing meeting is to clarify or facilitate resolution of any matters or issues associated with the application.

The Council may invite or require the applicant and any, or all, of the submitters relating to the application to attend the pre-hearing meeting. The Council will only require persons to attend the meeting with the applicant's agreement.

At the meeting, the chairperson will facilitate discussion between the applicant, the submitters, and Council staff. Parties can speak directly to each other, clarify the proposal and any concerns, and resolve misunderstandings before the hearing. The chairperson will guide the parties to:

- Isolate issues.
- Develop options.
- Consider alternatives.
- Reach common ground or an agreement.

The chairperson will be experienced in RMA matters and independent of the process so they can be regarded as neutral by all participants.

Pre-hearing meeting steps

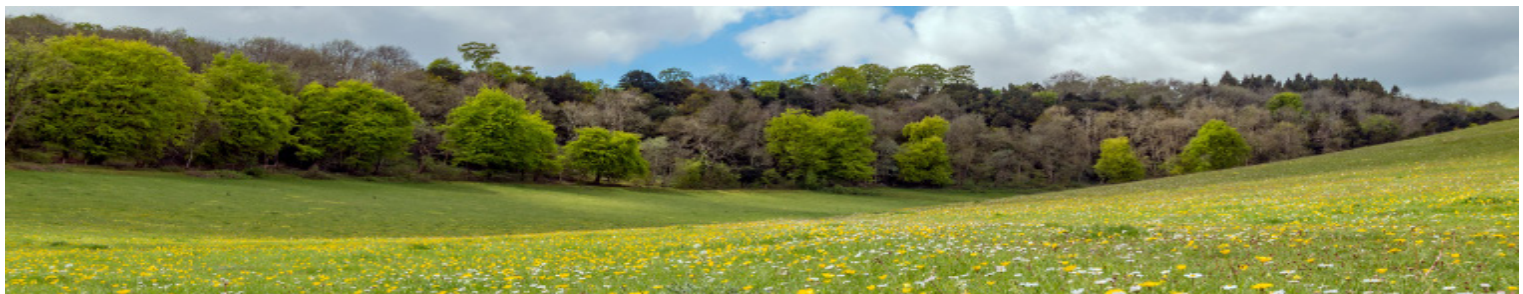
- The Council officer will discuss the pre-hearing process with the applicants and obtain their approval in principle.
- The Council officer will provide information on pre-hearing meetings to the applicant and the submitters with the acknowledgement of submissions letter.
- Parties will be contacted to see if they are interested in participating.
- The interested parties will be informed of what dates, times and venue would be appropriate, and asked if they have any special requirements.
- If iwi is involved, any required protocols will be included.
- The Council will provide parties with written confirmation of the date, time, and venue, who will attend, how the meeting will be conducted and a draft agenda detailing the purpose of the meeting.

A Council officer with delegation as a decision maker may be present and participate at the pre-hearing meeting subject to two conditions:

- The parties attending the meeting agree to this.
- The Council is satisfied that the person should not be disqualified from the meeting.

Pre-hearing meetings can be held at any time before a hearing. The Council will discuss the potential for a pre-hearing meeting and its process with the applicant and obtain approval in principle to proceed if appropriate before the submission period closes.

Pre-hearing meetings can assist in clarifying issues, drafting conditions, personalising the parties involved and enhancing communication after the meeting. The informal nature of pre-hearing meetings can also allow parties to be more open and creative in finding mutually acceptable solutions. This is especially important where the Council, applicant and interested parties need an ongoing relationship. Even when a hearing is subsequently required, pre-hearing meetings can help clarify issues, enabling the hearing to be more focused and less adversarial. However, a positive outcome from a pre-hearing meeting is reliant on participants being willing to resolve issues.



- The Council officer will phone the parties a few days before the meeting as a reminder.
- At the end of the meeting, the chairperson will inform everyone in attendance of the process going forward.
- The chairperson will prepare a report and circulate it to all parties who attended, at least five working days before the hearing begins. This report will set out:
 1. Those issues that are agreed and those that are outstanding.
 2. The nature of evidence agreed to be called and an indicative timetable for hearing.

The report excludes anything communicated or made available at the meeting on a without prejudice basis.

If a person required to attend fails to come to the meeting, and does not give a reasonable excuse, the Council may decline to process the application, or to consider the persons submission at the hearing itself. In both situations, there is a right of objection under s357A.

Hearing decisions issued 2022/2023

As you all know the requirement to schedule hearings falls under section 100 of the RMA 1991, which places an obligation on Council to hold a hearing if it considers it necessary, or the applicant or submitter has requested to be heard and has not changed that stance. Furthermore, the Environmental Planners processing applications refer any application to hearing where they have reached a view that, for a variety of reasons, they are unable to recommend a grant of consent.

There were 12 applications for resource consent progressed to hearing in the period between 1 July 2022 and 30 June 2023. Ten of the applications were heard by an Independent Commissioner. Two applications were scheduled for a joint hearing, however the requirement for hearing was resolved and the applications were considered and determined “on the papers” by members of the Resource Hearing Sub-Committee.

There were 954 decisions issued on applications for resource consent by Council’s Resource Consents team for the period 1 July 2022 to 30 June 2023. The 12 applications that progressed to a hearing or to the hearing panel account for 1.26% of the overall number of applications. Of those 12 applications only one decision was issued where consent was refused, this equates 0.10% of applications received by Council. All 11 of the remaining applications that proceeded to hearing or to the hearing panel were granted. At the time of drafting this article there is one application still in hearing, for which a decision has yet to be issued.

Overall, there were 11 days spent in hearing in the 2022/2023 period.

The 12 applications were spread across the consent categories of water (2), coastal (1), land use (6), and subdivision (4).

In all cases the applications were progressed to hearing because they involved submitters who had stated a wish to be heard and had not withdrawn that wish, or their submission. Six of the applications involved issues that could not be resolved by the Environmental Planner who therefore recommended they be progressed to hearing also for that reason.

In terms of the view of the Environmental Planning Officers processing the applications the officer was unable to recommend the consent should be granted in only three of the cases.



Outline plan waivers

An Outline Plan of Works is not always necessary for works within a designation. A Requiring Authority can request that the Council waive the requirement for an Outline Plan of Works if it does not believe one to be necessary. The Resource Consent Team is always happy to discuss the potential for a waiver with a Requiring Authority. The Council PIM Team may also identify at the planning component (Related Information) or Project Information Memorandum stage of the Building Consent process whether an outline plan waiver would be appropriate and will advise the Requiring Authority of this. The PIMs officer will refer potential outline plan waivers to Council's Technical Lead Land Use planner for determination.

Examples of work that have recently had the outline plan requirement waived in Marlborough include:

- internal refurbishments at the Blenheim Courthouse.
- partial rationalisation and reconfiguration of a classroom and removal of a room at Wairau Valley School.
- school office alterations at Renwick School.
- school boundary fence at Springlands School.

There are no specific criteria within s176A(2)(c) of the RMA for determining whether to waive the need for an outline plan. Council decision to waive the requirement for an outline plan is based on:

- the level of effects that the proposed work or project may have.
- whether the proposal or work would otherwise be a permitted activity and would meet any relevant performance standards of the underlying zone.
- whether the effects of the works are addressed through a regional resource consent process.
- whether the information has already been provided to the Territorial Authority as part of the designation.

For an outline plan waiver, the Requiring Authority can either submit a letter or complete the application form online in ReCApp. The information that needs to be provided includes:

- the height, shape, and bulk of the activity.
- the location of the site.
- the likely finished contour of the site.
- vehicle access and any parking.
- the landscaping proposed.
- any other matters to avoid, remedy, or mitigate any adverse effects on the environment.

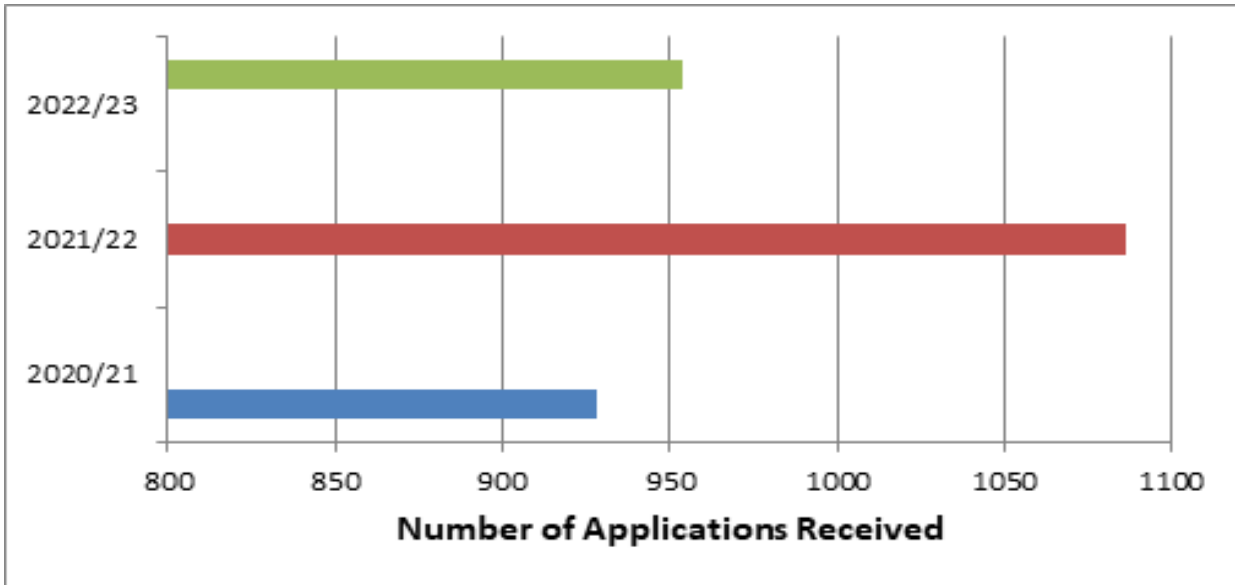
The fee for an outline plan waiver is \$133.00.

The application for an outline plan waiver needs to be submitted and approved before any construction takes place. Once the council determines that it is appropriate to waive the requirement for an outline plan, it advises the requiring authority in writing. The function to waive the outline plan requirements has been delegated by council to the Manager of Resource Consents. The process is ordinarily completed within a couple of days.



Resource Consents team financial year update 2022/2023

The 2022/2023 financial year was relatively steady for the Resource Consent Team. Overall, the number of applications received is slightly less than the previous financial year and slightly more than the year before. During the 2022/2023 financial year Council has received **954** applications. Of that total, **854** were new applications for resource consent. Council also received **89** applications for variations to resource consent conditions under section 127, **9** extensions to lapse date under section 125 and **2** objections to conditions/charges under section 357. In the same period in 2021/2022 Council received **1086** applications and in 2020/2021 Council received **928** applications.

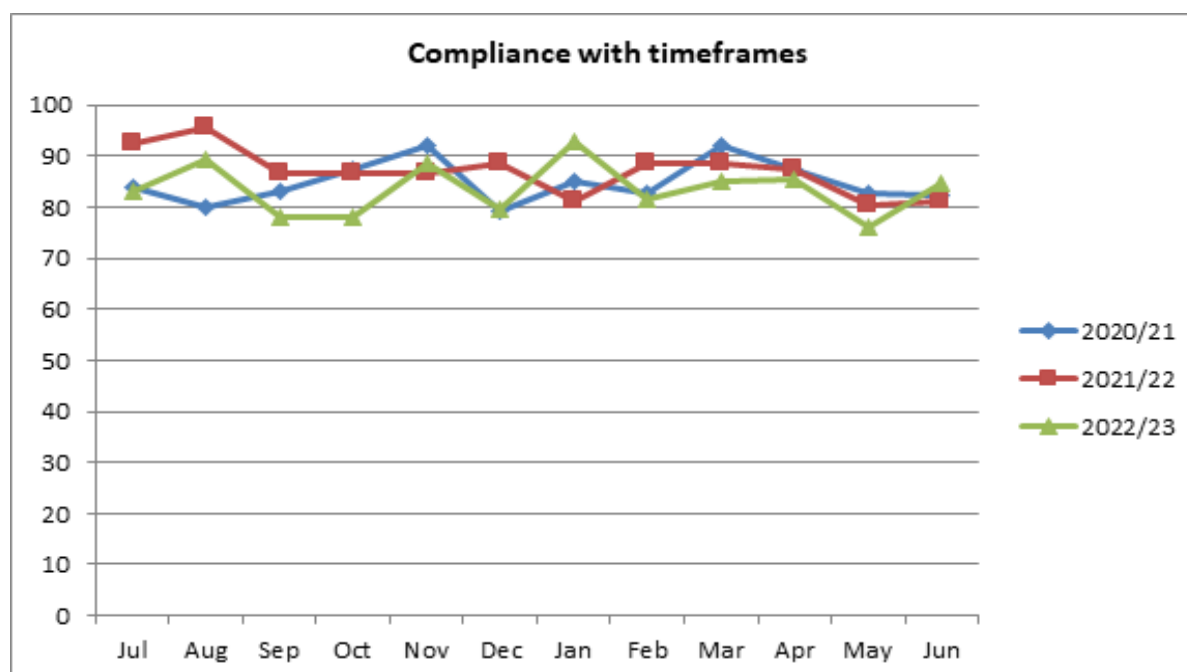


The number of decisions issued in the 2022/23 year was less than in the previous two financial years. Council issued **951** decisions in 2022/23. Of that total, **854** were for new applications for resource consent. Council also issued **84** section 127 decisions (variations to resource consent conditions), **11** section 125 (extension to lapse date) and **2** objections to conditions/charges under section 357. In the same period in 2021/22 Council issued **1,065** decisions and in 2020/21 Council issued **1084** decisions.



Timeframe compliance

Compliance with statutory timeframes is similar to the previous two financial years with 83.56% of applications being processed within statutory timeframes. In 2021/22 and 2020/21 86.98% and 84.90% of applications were processed within statutory timeframes respectively.



There are a few reasons why timeframe compliance has not been achieved including:

- The complexity of the applications received.
- Staff resources – loss through retirement and resignation of experienced planners with relevant skill sets.
- Challenges with new systems and processes.
- Operating under three Plans.

Several measures have been instituted to address timeframe compliance including:

- The establishment of three Lead Senior Environmental Planners to manage and process major regional and subdivision applications and to mentor and train developing staff.
- The establishment of a Technical Lead Land Use Planner role to manage and process the major land use applications and to mentor and train a developing Land Use planner.
- The availability of senior staff to allocate and monitor workload.
- The achievement of appropriate staffing levels.
- The creation of a pathway with full Council support for staff to develop and achieve recognition as a Senior Environmental Planner.
- Improvements and fixes to ReCApp to extend its capabilities beyond the current minimum viable product.
- A business continuity plan including fully functional electronic devices for all staff enabling business as usual if required to work remotely.

Deemed permitted marginal or temporary activities under Section 87BB of the RMA

Any non-compliance with the rules and requirements in the Plan triggers the need for a resource consent. However, some activities are of such a minor nature that their effects are no more than that of a permitted activity. In such cases Council has the discretion to waive the requirement for resource consent.

The intent of waiving the requirement for resource consent in these cases is to save time and costs by avoiding going through the unnecessary processing of what would be very simple resource consents. It is only applicable where notification and section 104 assessments are not necessary to assess the environmental effects of the proposed activity. If assessment of the proposed application is not a simple matter and would take a similar amount of time and assessment as processing a consent application, it would indicate that the activity does not meet the section 87BB criteria. Also, if there is a need to impose conditions the activity could not be considered under section 87BB. It is highly unlikely that regional consents would be deemed permitted under section 87BB. There is no formal application process or information requirements for a deemed permitted marginal or temporary activity. Council staff can identify activities that meet the criteria when a resource consent application is made or at the building consent check stage. An applicant can also make a specific request for their application to be considered a permitted marginal or temporary activity under section 87BB.

To enable the Council to consider exercising its discretion, it is essential that sufficient information is provided. Information required to make this assessment includes plans, an assessment of environmental effects and any other information supplied by the applicant and/or information gained through other council records or knowledge. The fee for the assessment and issuance of a Notice of Permitted Activity Status under section 87BB is \$200.

The first assessment Council makes is whether there is a 'marginal' or 'temporary' non-compliance with a rule. To be considered marginal the activity would need to be deemed to barely exceed minimum requirements. To be considered temporary the activity would need to be of a short duration. The degree of temporary would be considered on a case-by-case basis. The second assessment Council makes is whether the adverse effects of the activity would be no different in character, intensity, or scale than they would be in the absence of the marginal or temporary non-compliance. To meet these criteria the adverse effects of the activity would need to be indiscernible from those allowed by a permitted activity in the Plan.

The third assessment Council makes is whether effects on any person are less than minor. Once it is considered that an activity meets all the criteria under section 87BB a notice of permitted activity status is issued. The notice will include an explanation as to how the rule breach is 'marginal or temporary', how the effects are 'no different in character, intensity or scale' and how the effects on a person(s) are less than minor. The notice cannot include conditions, but the notice can include advice notes. The notices also have a lapse date of five years from the date of the notice.

There are no statutory timeframes for considering whether an activity is a deemed permitted marginal or temporary activity. However, Council does process these requests as promptly as possible, and they are normally completed within a couple of days.



Staff News



Ashleigh Meadowcroft

Ashleigh (Ash) is a born and raised local who has recently joined the Resource Consents team as an Administration Officer/Hearings Facilitator after starting with Council in October 2021 as a Customer Service Officer.

Ash enjoys the Blenheim sunshine, time with her cat and close family and friends. After discovering a love for the outdoors when previously working in Fox Glacier, she also enjoys getting out in nature and exploring new places.

Since purchasing a caravan 12 months ago, she has set herself the goals to own a tiny home and to travel some of the world.

She is career driven and excited for the growth and progression this new role will offer her in the Environmental sector

Next Issue out 1 December 2023

