

MARCH 2019

Inside This Issue

- **Dam It – it's hot out there**
- **Some Interesting Facts about 2017/2018**
- **Introducing the Planning Team**
- **Remember – Not All Resource Consents Last Forever**
- **Owners Liability Under the RMA**
- **Factoring in Notification when Planning your project**
- **Oil Rig Visit to Admiralty Bay**
- **Staff Profiles**

Some Interesting Facts about 2017/2018

Over the 2017/2018 year Council received 1088 applications for resource consent. Here are some interesting statistics about those applications:

- 66% of applications were processed on a non-notified basis, 19% were limited notified and 5% were publicly notified.
- Of the consent types covered by the non-notified applications, 49% were for land use activities, 15% for discharge activities and 16% were for subdivision.

Dam It – it's hot out there

It won't have escaped anyone's notice that we are experiencing a very hot summer. Current river flows are low and water permit abstractions are under restriction and/or cut off. At this time it may be appropriate for agents to start conversations with their clients on water storage and other solutions to meet irrigation needs in these circumstances.



- 88% of the limited notified applications were for coastal permits.
 - 50% of the notified applications were for water permits.
 - 53 applications were rejected under Section 88 of the Resource Management Act 1991 (RMA).
 - 38 applications were withdrawn or closed.
- The applications were processed by 13 planners.



Introducing the Planning Team

The Resource Consent Group is responsible for implementing the statutory functions described in the RMA. The RMA sets out the processes that must be followed when processing and determining applications for resource consent. Marlborough District Council is a unitary authority, which means it is responsible for regional, district and coastal functions. In other regions these functions are separated out to regional and district authorities. This makes the Marlborough District Council a “one stop shop” when it comes to the administration of the powers, duties and functions under the RMA.

There are five categories of resource consent provided for under the RMA. Any activities that fall within these categories may require an application for resource consent. The categories are:

- Land Use, including the erection of buildings, land disturbance and the use of riverbeds and lakes.
- Subdivision of land.
- Coastal Marine, including reclamation of the foreshore and seabed, the erection or demolition of structures and occupancy of the coastal marine area, including marine farming.
- Water, including the taking, damming, diversion and use of water.
- Discharge of contaminants into the environment (to water, land or air).

In some cases, the statutory process requires the application to be heard and determined by a hearing panel or commissioner at a hearing. The staff member who oversees this stage in the application process is the Hearing Facilitator, Sue Bulfield-Johnston.

Last, but by no means least, is the Manager of the Resource Consent Group, Anna Eatherley. Anna oversees the entire group function to ensure it fulfils its statutory function under the RMA and meets its obligations to both internal and external customers.



The Resource Consent Group is responsible for the processing and determining of applications for resource consent. The group members have the following areas of responsibilities that correspond with the consent categories:

- Land Use – Jenny Folster and Rebecca Partridge
- Land Use (Land Disturbance) – Jenny Folster
- Land Use (Bores and Riverbed Disturbances) – Glen Parker, Victoria Bell and Summer Denize
- Subdivision – Ian Sutherland
- Coastal Marine – Peter Johnson and Abbey McMillan
- Water – Glen Parker, Victoria Bell and Summer Denize
- Discharge (to Land, Water or Air) – Glen Parker
- Duty Planners – Lynn Mullens and Sarah Silverstar



Remember – Not All Resource Consents Last Forever

Under the RMA, and unless otherwise specified in the decision, resource consents granted for subdivision and most land use activities are enduring, without an expiry date. The remaining consents specify a term, not exceeding 35 years. If no term is specified in the decision the consent will expire after 5 years. The take home message is to be vigilant around when consents expire. Sections 123 and 123A of the RMA deal with the duration of consents.

Of course this is all predicated on whether the consent has been given effect to in the first place. Section 125 of the RMA says that resource consent will lapse if not given effect to by the date specified in the consent decision. If no date is specified then the lapse date defaults to 5 years for most consent categories and 3 years for coastal permits for aquaculture activities. An application can be made to extend the lapse period. Section 125 sets out the matters that Council will need to take into account when assessing the application. Be mindful of the requirements set out in the consent to demonstrate that effect has been given. The consent will often have conditions that state they must be completed before operating under the consent.

You can easily access Council's records on resource consents via its website. The Smart Maps tool provides a range of search functionality, including property based searches, marine farm and resource consent searches. Whichever way you use the tool you can make your way to the resource consent and view the decision document, related documents and records.

The Council website also provides information on resource consents and how to apply for them. Don't forget that Council is currently developing a digital resource consenting system. To read more on this system refer to our previous newsletter. Stage 1 of the system roll-out is the online application tool. You can use it now to lodge your applications with Council. Follow the link provided on our website.



Take a look at Sections 124, 124A, 124B and 124C of the RMA. If an application is lodged for a new consent for the same activity at least 6 months prior to the expiry of an existing consent, the consent holder may continue to operate until the new consent is either granted or declined, and all appeals are determined. If the new application is lodged between 6 and 3 months before the expiry of the existing consent, then the ability for the consent holder to continue operating is at the discretion of Council. If the application is not lodged at least 3 months prior to the expiry of the existing consent, the operation must cease on the expiry of the consent.

When there is more than one application for the same resource, an application to replace existing consents (Section 124) is entitled to priority over the application that are not. Sections 124B and 124C set out how to manage consent applications that are competing for the same resource.

Finally, when Council considers any new applications to replace existing consents (Section 124) it must have regard to the value of the investment of the existing consent holder. Section 104 of the RMA sets out the general matters Council must have regard to when considering an application for resource consent.

Owners Liability Under the RMA

Landowners should have an understanding of Section 338(1)(a) of the RMA and the restrictions of Part 3 as these create liability for landowners. Offences under the RMA have substantial penalties for individuals and companies. Offences under the RMA can occur either from acts (i.e. by actively carrying out some works such as excavation in a riverbed) or by omissions (i.e. by failing to do something like adequately managing storage of fuel or other contaminants on the property which contributes to a discharge).

A landowner could offend under the RMA by permitting something to occur on their property that breaches the restrictions in Part 3, or by failing to take action, put measures in place or provide against something happening on their property that breaches those restrictions. In some situations, failing to investigate what is occurring on the property and to take appropriate preventative steps could amount to permitting a contravention of the RMA.

RMA offences are strict liability offences under Section 341 of the RMA (for offences under subsections 9 and 11-15). This means that it is not necessary to prove that the landowner intended to commit that offence, for offences under subsections 9 and 11-15.

Because of Section 340, where an offence is committed against the RMA by any person acting as the agent (e.g. employee, contractor) for another person, that other person is liable to the same extent as if they had personally committed the offence.

However, the RMA also makes defences available to landowners in certain circumstances. The defences must be made out with evidence.

- There is a defence if the landowner:
 - Could not have reasonably known that the offence was to be committed on their property; or
 - Took all reasonable steps to prevent the commission of the offence; and
 - Took all reasonable steps to remedy any effects from the act or omission giving rise to the offence.
- Regarding strict liability under Section 341, a landowner has a defence if the act or action was necessary for the purposes of saving or protecting life or health, preventing serious property damage or avoiding adverse effects on the environment. The conduct of the landowner has to have been reasonable and the effects of the actions taken need to have been adequately mitigated or remedied by the landowner.
- There is also a defence available to a landowner if the action or event was due to an event beyond their control, such as a natural disaster or sabotage, and the event could not have been reasonably foreseen or provided against, and the effects of the action or event were adequately mitigated or remedied.

Landowners are advised to take reasonable steps to avoid offences occurring on their properties, including:

- Assessment of risk and implementation of adequate measures to address those risks;
- Adequate site supervision and oversight;
- Timely and effective reaction to any issues arising; and
- Taking all practicable steps to avoid, remedy or mitigate adverse environmental effects.



Factoring in Notification when Planning your Project

Sections 95 to 95G of the RMA guides the process for deciding whether or not an application for resource consent should be notified. Factors to consider include whether there is an adverse effect on the environment that is more than minor. Additionally an application can be notified at the request of the applicant. If you consider that your application is of the nature and/or scale that the Marlborough District Council is likely to notify it anyway, you can cut down time by requesting that your application be notified in the application itself.

Affected party approvals supplied by the applicant assist the Resource Management Officer to identify who should be notified and whether the notification should be limited to a selection of affected parties or publicly notified where anyone has a right to lodge a submission to the application.

The time in which an application is notified varies. In the case of a fast track application the notification must occur no later than 10 working days after the application is lodged. Applications that are not fast tracked must be notified no later than 20 working days after the day the application is lodged.

The notification period provides 20 working days for people to lodge submissions in response to the application.

Following notification there may be a requirement to schedule a hearing on the application. There may be a pre-hearing meeting as well to try and resolve submitter concerns.

The timeframe in which the hearing takes place varies again depending on whether the application was notified and, if so, whether it was notified on a public or limited basis.

If an application was not notified the hearing must commence within 35 days after the lodgement of the application. If the application was notified on a limited basis the hearing must be completed no later than 45 days after the closing date of submissions. If the application was publicly notified the hearing must be completed no later than 75 days after the closing date of submissions.

Any of the above timeframes can be extended or waived in specific circumstances. Section 37 guides the process to do this.

A key take home message is to factor in timeframes for the processing of applications for resource consent. There are many stages for which legislation provides a specific timeframe that may be triggered by an application. Remember to take these timeframes into consideration when planning any projects and scheduling work on site. Works that are the subject of an application cannot commence until the grant of consent (which may require building consent too).

Oil Rig Visit to Admiralty Bay

In 2018 a coastal permit was granted for the movement of marine drilling rigs off and back on to heavy lift vessels in Admiralty Bay. This was to allow for Admiralty Bay to serve as a transit point for the rigs on their journey to New Zealand. The rigs, once floated off of heavy lift vessels that carried them to New Zealand, are then towed to the Taranaki offshore oil and gas fields. On the completion of the scheduled drilling programmes the rigs are towed back to Admiralty Bay to be floated back on to the heavy lift vessel to commence their return journey overseas.

At the beginning of February, the COSL Boss oil rig was floated off and then towed up to Taranaki. The float-off sequence took place over a period of 6 days, with delays occurring due to weather conditions. The Marlborough District Council took the opportunity to run an oil spill exercise using the float-off as the backdrop to a fictional spill scenario. Thankfully the float-off sequence unfolded without any consequences and the Oil Spill Response Team had to confine themselves to a make believe situation.



Staff Profiles

Gina Ferguson



Gina is a local, Marlborough girl and has enjoyed returning to raise her family here after obtaining a Bachelor of Science and Graduate Diploma in Environmental Health from the University of Auckland. She joined the Marlborough District Council in 2008 working in compliance and accepted the role as Compliance Manager in 2015. In 2018 Gina became Consents and Compliance Manager overseeing the Compliance, Building and Resource Consents teams.

Anna Eatherley



Anna has been a planner for nearly 35 years. She has a Bachelor of Town Planning and a Master of Philosophy in Geography from the University of Auckland. She is also a full member of the New Zealand Planning Institute.

Anna initially worked 3 years in New Zealand as a Graduate Planner before working for 18 years in various planning roles in London and Bermuda. When she left Bermuda she was the Manager of the Building, Planning and Compliance Teams with the Bermuda Government. Anna then returned to New Zealand to be near family and for her children to attend secondary school and university.

Barbara Mead



Barbara joined Marlborough District Council's Regulatory Department in 2017 as a Legal Officer to assist with the new digital build. She has since transitioned to her current role leading a new team, Advocacy and Practice Integration. This group provides several services to the Consents and Compliance Groups, including best practice improvements. Barbara was admitted as a Barrister and Solicitor in 2001 specialising in litigation practice. She was awarded her Masters of Laws with Honours focusing on Environmental Law in 2003. Having moved to Marlborough in 2014 with her family, she has enjoyed getting to know the region and its welcoming community, and enrolled in a Degree in Viticulture and Wine Production which will be completed at the end of 2019.

Next Issue out 1 June 2019