MARLBOROUGH DISTRICT COUNCIL

# Resource Consents Team Newsletter

September 2020

## Welcome to Our Spring Edition Newsletter

## Inside This Issue



## Frequently Asked Questions (FAQs)

Work has been underway on the development of a FAQ section on Council's website pertaining to the Consents and Compliance Group. The aim is to provide a surface level response to some of the most frequently asked questions lodged with the Duty Planner service. The FAQs cover matters relating to resource and building consent statutory processes, the Duty Planner service and topical subjects of current interest to the public.

Anyone wanting to utilise the Duty Planner service will be directed in the first instance to the FAQs. If the answer sought is not found, then a Duty Planner query can be lodged using the online form provided. https://www.marlborough.govt.nz/services/resource-consents/duty-planner-service-information/duty-planner-enquiry-form

# Tips on how to move smoothly and most cost effectively through the resource consent process

Resource consents are the Council's approval for someone to do something that is not permitted as of right in the Council's Plans. A resource consent is required when an activity has the potential to affect others; from direct neighbours, to the wider community and the environment. The role of the Council Environmental Planning Officer (EPO) is to consider the effects of a proposed activity. The time that is taken to process an application through the various statutory steps under the Resource Management Act 1991 (RMA) is directly reflected in charges to the applicant. People often ask how they can move more smoothly through this process and keep their costs under control.

## Who pays for a resource consent?

Like all other councils in New Zealand, Marlborough District Council has a user-pays philosophy for handling applications for resource consent. This means that the applicant benefitting from the resource consent pays the full cost of processing the application, rather than having that cost fall to the general ratepayer.

## How much will a resource consent cost?

The general cost of an application depends on its complexity. An application which contains all of the required information and does not need consultation with other affected people is unlikely to exceed the lodgement fee of $1,000. The lodgement fee is intended to cover staff time processing the application, plus the cost of disbursements and overheads. In contrast, applications which affect other people who may object to the proposal, resulting in a hearing, can cost many thousands of dollars, especially if advice or evidence is required from specialists.

## Project planning

Even if all of the required information is provided and the application moves smoothly through the process, it will still take time for it to be granted. It is best to take this into consideration when planning a project so that the issuance of a building permit and ultimately commencement is not held up by waiting for the resource consent. It also takes time to consult any affected parties and, if appropriate, get their written approvals. If this is completed prior to lodging your application the processing time can be reduced.

## How can processing costs be reduced?

One of the best ways to manage costs associated with processing an application is to communicate with the Resource Consents Team before an application is prepared and lodged. There is no charge for consulting the Duty Planner. However, this approach is best for the less complex applications as it is limited to a maximum of 30 minutes of officer time. With more complex applications, a pre-application meeting is recommended. There is a charge for the time taken by the EPO to prepare for and attend the meeting, but processing the application will generally be simpler, quicker and less costly when this approach is taken.

Whether an application is simple or complex, the most critical element to keeping costs as low as possible is for it to contain all the required information from the outset. When Council staff have to deal with an application that is incomplete, additional time is required, which results in higher charges.

If an application must be notified and receives submissions, it is desirable to resolve any issues raised so that a hearing and its associated high cost can be avoided.

## Resource Management Amendment Act 2020

On 30 June 2020, the proposed Resource Management Amendment Bill, intending to place the RMA on the surgeons table, was officially given the 'go ahead' - officiating it as the 'Resource Management Amendment Act 2020' (Amendment Act).

It's a starting point in acknowledging societal demands and changes since the RMA was first brought into the world in the 20th century. It introduces new sections and alters others to reduce the level of complexity encompassed in the RMA, whilst increasing certainty and restoring public participation opportunities to improve the RMA's processes.

Changes have been brought to various parts of the RMA - ranging from the consenting process, compliance, monitoring, freshwater, climate change, and even the involvement of special advisors to the Environment Court.

The Amendment Act sees changes to the resource consenting process in which it allows councils to suspend the processing of resource consent applications until the required fixed administrative charges are paid (for lodgement and notification). The period to lodge retrospective resource consent applications for emergency works has also been extended to 60 working days.

Public notification and appeal preclusions for resource consents for subdivision and residential activities are removed, and subdivision activity reverts to the original presumption of being "restricted".

Something which may be of interest to many customers going through the hearing process is the removal of the restriction on submitters to only appeal matters that were raised in their original submission. They may now appeal on any matter that was raised in their submission (except any part of the submission that was struck out under section 41D of the RMA), and on any matter that was not raised in their submission.

The Amendment Act also supports the need to improve freshwater management and responds to climate change in New Zealand. This is brought by way of a new freshwater planning process that regional councils and unitary authorities, like Marlborough District Council, must use for proposed freshwater provisions in regional policy statements and regional plans (excluding regional coastal plans).

These new freshwater planning process provisions have been introduced to enable regional councils to make changes to their freshwater plans in a robust but more efficient way than those outlined in the current RMA planning process.

Along with these new changes, the RMA's compliance and enforcement provisions have also been revised. Of these, the timeframe for laying prosecution charges has increased from 6 months to 12 months from after the date on which the contravention giving rise to the charge ought to reasonably have been known to Council. This gives more time for Council to work with people to address the breach of planning provisions, resource consent or abatement notice, etc, without taking higher level enforcement steps. It also increases the effectiveness of outcomes for our community by enabling more time to complete investigations and explore options, including who, if anyone, should face charges.

The Amendment Act also sees the RMA increase its maximum fees for infringement offences to ensure infringement fees act as 'adequate deterrents'. The previously $1,000 fee for an infringement offence has been increased to $2,000 in the case of a natural person, and up to $4,000 in the case of a person other than natural persons.

Also, the Amendment Act establishes a new role for the Environment Protection Authority (EPA) - enlarging their watchdog role and increasing the sharpness of their teeth. Previously under the RMA, compliance and enforcement functions have been delegated only to councils, but now with the Amendment Act, the RMA has been amended to enable the EPA to collaborate with councils, or take over compliance matters completely, regardless of where in the investigation process the matter is.

To support this new role, the Amendment Act has granted the EPA with various powers and functions. These include the ability to appoint enforcement officers through a warrant of appointment, prosecute (file a charging document) for an offence against the RMA in the District Court, and along with various others, the EPA can require information from the Council to support an RMA investigation.

## Resource Management Amendment Act 2020 continued...

As a mechanism of balance and check, the RMA now includes a requirement for the EPA to include information about its use of RMA enforcement powers in its annual report.

Not all of these changes will commence at once, they have been staggered over several months. Key dates to note include:

- Consenting changes come into force at various time.
- Compliance, monitoring and enforcement changes come into force from 1 July 2020.
- Freshwater changes come into force from 1 July 2020.
- Climate change changes come into force at various times.
- Environment Court changes come into force from 1 July 2020.
- Other changes, including those around financial contributions and regulation making powers, come into force from 1 July 2020.

Council is already revising its documents and processes to ensure it is ready to hit the ground running as each of these changes take effect and is keeping its eye on the horizon for the changes that are yet to come.

Photo sourced from Stuff online
Article: Top 10 Waterholes to Cool off this Summer
20/10/2015
Photographer: Ian Brooke

## Heritage and the Proposed Marlborough Environment Plan

Recognition and protection of the historic heritage features found in our region is an important element of the Marlborough Environment Plan (PMEP). From a heritage perspective, Marlborough is home to a number of New Zealand firsts and diversity of heritage resources. Some of our heritage resources are nationally significant, such as the history of Māori occupation at the Wairau Bar or the ship Edwin Fox in Picton Harbour. Many other heritage resources are either significant for the district or for local communities. Sites of historical or cultural value are also becoming increasingly important as tourism in Marlborough grows, bringing with it the advantage of commercial support for the enhancement of historic heritage.

Heritage New Zealand Pouhere Taonga (HNZPT) is the agency that manages heritage resources on a national basis. This autonomous Crown Entity administers the New Zealand Heritage List/Rārangi Kōrero, which informs property owners and the public about New Zealand's historic places. It also investigates and processes proposals for new additions to the list. It is also important to note that HNZPT retains regulatory responsibilities regarding archaeological sites.

HNZPT requirements for archaeological sites are set out in Schedule 5 of Appendix 13 of the PMEP and must be considered alongside the relevant provisions of the PMEP. An archaeological authority (consent) from HNZPT must be obtained prior to the commencement of relevant works, and preferably before submitting any resource consent application. It is an offence to modify or destroy an archaeological site, or demolish/destroy a whole building, without HNZPT approval if the person knew or ought to reasonably suspect it to be an archaeological site.

The PMEP is part of the protective mechanisms for our heritage and compliments HNZPT requirements when it comes to managing our heritage resources. This reflects section 6(f) of the RMA which requires the Council to recognise and provide for protection of historic heritage from inappropriate subdivision, use and development. Council also protects unregistered heritage resources that are significant to the district, or to local communities within it.

An extensive register of Marlborough's heritage resources, including Sites and Places of Significance to Marlborough's Tangata Whenua Iwi, is found in Appendix 13 (alongside Notable Trees); and the Council SmartMap for Heritage Sites and Trees is available for easy reference. It is important to note that not all heritage sites listed in the appendix to Council's plans are listed by the HNZPT and vice versa. It is best then to always approach HNZPT before finalising any plans or resource consent applications.

When applying for a resource consent that may affect a heritage asset, the relevant rules and standards for activities around heritage resources are found in the PMEP Volume 2: Chapter 2 - General Rules; and policies are found in Volume 1: Chapter 10 - Heritage Resources. Broadly, the repair and maintenance of a heritage resource is a permitted activity in the PMEP provided the proposed works meet the permitted standards. An application must be made for a discretionary activity if the proposal does not meet the applicable standards for a permitted activity, or it is for a land use activity which relates to a heritage resource that is not provided for.

It is important to remember that the requirements of HNZPT and the PMEP are separate but complimentary. Application to both HNZPT for an archaeological authority and to Council for resource consent may be required. Some activities may trigger a requirement under the HNZPT but not trigger a resource consent requirement under the PMEP. Receipt of one does not automatically preclude the necessity of gaining the other before legally starting an activity that may lead to the damage or destruction of a heritage resource. Early engagement with HNZPT and Council can help provide clarity and confidence in the consents required for an activity affecting a heritage resource.

## Hazard Overlay

Some of you may be wondering what has happened with the Hazard Overlay for Unstable Land as it no longer appears in the PMEP but was a prominent feature in the Marlborough Sounds Resource Management Plan.

The Hazard Overlay was removed from the PMEP as the issue of construction on unstable land was already managed by the Building Act 2004, sections 71 to 75. To require a consent where the Building Act 2004 already managed the risk in its consent process was considered an unnecessary step and expense for land owners.

Does this then mean that the Hazard Overlay no longer applies at all? The answer is not quite as simple. In very brief terms, yes it does. The mechanics of the RMA however complicate things a little.

Policies within an operative plan remain relevant and applicable until a proposed plan becomes fully operative and replaces the existing operative plan. The weight given to the existing operative policies may decrease however as the proposed plan moves closer to becoming the operative plan. The case is different with rules and standards. The existing operative plan rules and standards continue in force and must be complied with until the new proposed rule or standard managing that activity gains a particular legal status (treated as operative).

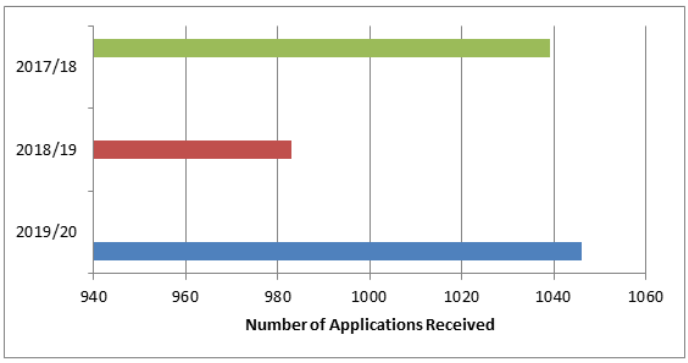
The proposed rules and standards only become treated as operative when the appeal period closes (for us at 5.00 pm on 8 May 2020) and no appeals were lodged in respect of those rules or standards. At that point those proposed rules and standards are the only ones which much be complied with as the existing rules and standards become inoperative. The trigger then to becoming inoperative is a new rule or standard becoming treated as operative.

The complication with the Hazard Overlay is that on the face of it there is no new rule or standard as the requirement has been removed. However, the activity itself, construction for the purposes of for example a dwelling, is still provided for by rules and standards. Therefore, where the rule or standard which applies to your proposed activity has become treated as operative you may rely on that and in doing so will not need to apply the Hazard Overlay for Unstable Land.

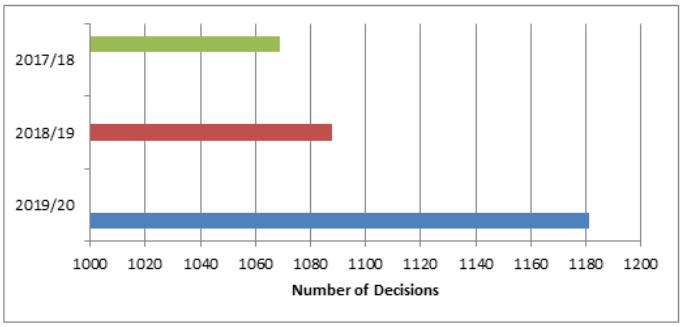
As we are still working through the appeal process it is important to check the Appeals Version of the PMEP when determining which rules may now be treated as operative. A link to this plan may be found below:
https://www.marlborough.govt.nz/your-council/resource-management-policy-and-plans/proposed-marlborough-environment-plan/decisions-on-the-pmep/appeal-process/appeals-version-of-the-pmep

# Resource Consents Team Update 2019/2020

Despite being impacted by the Covid-19 Lockdown and Levels Two and Three, the 2019/2020 financial year has been relatively busy for the Resource Consents Team. During the financial year Council received **1046** applications. Of that total, **955** were new applications for resource consent. Council also received **81** applications for variations to resource consent conditions under section 127, **9** extensions to lapse date under section 125 and **1** objection to conditions under section 357. In the 2018/2019 year Council received **983** applications and in the 2017/2018 year Council received **1039** applications.




In the 2019/2020 financial year Council issued **1181** decisions. Of that total, **1071** were for new applications for resource consent. Council also issued **102** section 127 decisions (variations to resource consent conditions) and **8** section 125 (extension to lapse date). In the 2018/2019 year Council issued **1088** decisions and in the 2017/2018 year Council issued **1069** decisions.




Over Lockdown the Team worked on improvements to the Duty Planner service and the refreshed Duty Planner service was launched on the first day that we moved into Level Three. The Duty Planner service has been identified as a Council priority for delivery post Level 4 Lockdown to support economic stimulus. The refresh has focussed on streamlining the service so that we can meet the demand that is expected as we move through the levels post the Lockdown. Improvements have been made to the information and the form on the website and the Team has committed to responding to and recording all responses as quickly as possible (complex enquiries which require information from other areas of Council may take longer). The Duty Planner inbox, which is where the enquiries are received, will be managed by two dedicated staff. They will respond to the enquiries that they can within the timeframe, but if additional resources are required, they will allocate enquiries to other EPOs. To achieve this desired level of service all of the EPOs are committed to assisting with Duty Planner enquires when required. The priority is on responding to enquiries that have been received post moving into Level 3. So far the refreshed service has received positive feedback from our customers and key stakeholders.

## Hearing Decisions Issued 2019/2020

The requirement to schedule hearings falls under section 100 of the RMA, 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. EPOs processing applications refer any application to hearing where they have reached a view that, for a variety of reasons, they are unable to grant consent. Overall, it appears that hearings are, in the main, required due to the submitters stating their wish to be heard and not altering this stance.

There were **24** applications for resource consent and **2** section 357 objections that progressed to hearing in the period between 1 July 2019 and 30 June 2020. Of the section 357 objections, 1 was lodged under section 357A objecting to a decision not to issue a Certificate of Compliance. The second section 357 objection was lodged under section 357B in relation to the cost charged to the applicant. The applications were heard either by an Independent Commissioner, members of the Resource Consent Hearing Sub-Committee, or a combination of both (a mixed panel). The use of Independent Commissioners increased during this period due to members of the Resource Consent Hearing Sub-Committee being seconded to the panel tasked to hear and decide on submission to the PMEP.

There were **2268** applications processed by Council's Resource Consents Team for the period 1 July 2018 to 30 June 2020. The **25** applications that progressed to a hearing account for 1.1% of the overall applications. Of those **25** applications **6** decisions were issued where consent was refused, this means that 0.26% of applications received by Council were refused.

In general the EPOs will work with the parties to help them resolve their differences, or provide the opportunity for the applicant to work independently with the submitters to achieve this outcome. The applications progressed to hearing were for instances where the issues could not be resolved and the case needed to be put before independent decision maker(s).

The majority of the **25** applications related to activities in the coastal environment. Applications for subdivision and land use activities largely made up the balance. Water permits accounted for just 2 of the hearings. A number of the applications required multiple consents and across the board they covered all five consent categories; subdivision, land use, coastal permit, water permit and discharge permit.

The most common reason the applications were progressed to hearing was that they involved submitters who had stated a wish to be heard and had not withdrawn that wish or their submission. In **1** of those cases the applicant also asked that the application proceed to hearing. Only **5** of the applications involved unresolved issues identified by the EPO that required they be progressed to hearing.

One of the hearings was for a section 357A objection. The RMA requires that any unresolved objections proceed to hearing.

In terms of the view of the EPOs processing the applications, the officer recommended the consent should be refused in only **6** of the cases. In **9** of the cases the EPO made no recommendation, although in some of those cases the EPO provided a summary of where the application did and did not align with the planning provisions; and in **10** cases the EPO recommended the application be granted consent.

Of the **25** applications, **6** were refused consent and **18** were granted consent, and the section 357A objection was upheld. All of the **6** decisions refused consent were before an independent decision maker with **1** of the cases before a mixed panel consisting of an Independent Commissioner and one or two members of the Resource consent Hearing Sub-Committee.

## Next Issue out 1 December 2020

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