



Consents procedures manual

Environmental Regulation Department

Contents

Chapter 1	Introduction	1-1
Chapter 2	Resource Management Act 1991	2-1
2.1	Types of resource consents	2-1
2.2	Policy statements	2-2
2.3	Regional plans	2-2
2.4	Finding out what rule applies to an activity	2-2
2.5	What happens if a plan changes	2-3
Chapter 3	Office structure	3-1
3.1	Environmental Regulation Department (Wellington)	3-1
3.2	Environmental Regulation Department (Wairarapa)	3-1
3.3	Roles and responsibilities	3-1
3.4	Delegations	3-2
Chapter 4	Resources available	4-1
4.1	CoCo database	4-1
4.2	Resource material	4-1
4.3	Forms, standard letters and brochures	4-2
4.3.1	Application forms	4-2
4.3.2	Brochures	4-2
4.3.3	Standard letters	4-2
Chapter 5	Pre-application procedures	5-1
5.1	Pre-application discussions	5-1
5.2	New applications	5-1
5.3	Joint applications	5-2
5.4	Consultation	5-3
5.5	Replacement consents	5-4
Chapter 6	Time frames, extensions and waivers	6-1
6.1	Time limits	6-1
6.2	Working days	6-4
6.3	Waiver or extension of time limits	6-4
6.3.1	Things you must take into account when waiving or extending times	6-4
6.3.2	Extensions requested by GWRC	6-4
6.3.3	Extensions requested by the applicant	6-5
6.3.4	GWRC waiver of information requirements	6-6
Chapter 7	Consent administration	7-1
7.1	When the resource consent application arrives	7-1
7.2	Setting up the file	7-1
7.2.1	Consent numbering	7-1
7.2.2	Charge codes	7-2
7.2.3	Forms and checklists to be Included on the file (Wellington office only)	7-3
7.2.4	Iwi involvement	7-3

7.3	Initial set up of consent on CoCo	7-4
7.4	Fees	7-4
7.5	Internal circulation of applications received	7-5
7.6	Filing of information	7-5
Chapter 8	Initial assessment of application	8-1
8.1	Incoming consent application	8-1
8.1.1	Determine whether application is complete	8-1
8.2	Checklist for assessing adequacy of AEEs	8-1
8.3	Verify lodgement requirements on CoCo	8-2
8.4	Determining an application as 'incomplete'	8-2
8.5	Resubmitted applications that were determined as incomplete	8-3
8.6	Withdrawal of a consent application	8-3
Chapter 9	Making the notification decision	9-1
9.1	Introduction	9-1
9.2	Statutory requirements	9-1
9.3	Who makes the notification decision?	9-3
9.4	Documenting your notification decision	9-3
9.5	Are adverse effects minor or more than minor?	9-3
9.5.1	Guidelines	9-3
9.5.2	Restricted discretionary activities	9-4
9.5.3	Permitted baseline considerations	9-4
9.6	Are there adversely affected persons?	9-5
9.6.1	Statutory considerations	9-5
9.6.2	Identifying adversely affected persons	9-5
9.6.3	Pre-application consultation with affected and interested persons	9-6
9.6.4	Obtaining written approvals	9-7
9.6.5	If approval is withheld	9-7
9.6.6	Stopping the statutory clock so the applicant can obtain written approvals	9-8
9.6.7	Withdrawal of written approval	9-8
9.7	Challenges to notification decision	9-8
9.7.1	High Court judicial review	9-8
9.7.2	Section 104(3)(d) of the Act	9-9
Chapter 10	Consent processing	10-1
10.1	Acknowledge application	10-1
10.2	Are further consents required?	10-1
10.3	Are written approvals required?	10-1
10.4	Statutory referrals of applications	10-2
10.4.1	Activities in the coastal marine area	10-2
10.4.2	Consents involving land with heritage value	10-2
10.4.3	Consents involving piping or reclaiming streams	10-3
10.4.4	Swing moorings	10-3
10.5	Is further information required from applicant?	10-3
10.5.1	Statutory framework	10-3
10.5.2	Documentation	10-3
10.5.3	Timeframes	10-4
10.5.4	Refusal or failure to provide further information	10-4

10.6	Commissioning a report on the application	10-6
10.6.1	Statutory framework	10-6
10.6.2	Documentation	10-6
10.6.3	Timeframes	10-6
10.6.4	Failure to respond or refusal to agree to commissioning of report	10-7
10.7	Iwi advice - Non-notified consent applications	10-7
10.8	Seeking advice from other GWRC Departments	10-8
10.8.1	Consents involving watercourses	10-8
10.8.2	Coastal permits involving navigational safety	10-9
10.8.3	Wairarapa Consents	10-9
10.9	Serving notice on adversely affected parties (Limited notification applications)	10-9
10.10	Public notification process	10-9
10.10.1	Public notice (advertisement)	10-9
10.10.2	Sign	10-10
10.10.3	Individual notification of affected or interested parties	10-11
10.11	Submissions process	10-12
10.11.1	Submitters requirements	10-12
10.11.2	After submissions close	10-12
10.11.3	Late submissions	10-12
10.11.4	Submissions received where notice not served (limited notification)	10-13
10.11.5	Requests for further information	10-13
10.11.6	If no submissions received	10-13
10.12	Pre-hearing meeting	10-13
10.12.1	Statutory framework	10-13
10.12.2	GWRC policy	10-14
10.12.3	Who should attend the meeting	10-14
10.12.4	Arranging the date and venue for the meeting	10-14
10.12.5	Invitations to the meeting	10-15
10.12.6	Conduct of pre-hearing meeting	10-15
10.12.7	Report of pre-hearing meeting	10-16
10.13	Mediation	10-17
10.14	Negotiated outcome – decision without hearing	10-17
10.14.1	Agreement on consent conditions and extending timeframes	10-17
10.14.2	Formulation of conditions	10-17
10.14.3	Agreement on consent conditions and waiver of request to be heard	10-17
10.15	Matters to be considered in officer's report	10-18
10.15.1	Statutory basis for officer's report	10-18
10.15.2	Section 104 matters	10-18
10.15.3	Non-notified officer's report	10-20
10.15.4	Public notification or limited notification with no hearing officer's report	10-20
10.15.5	Public notification or limited notification with hearing officer's report	10-20
10.16	Hearings	10-21
10.16.1	Statutory requirements	10-21

10.16.2	Pre-circulation of evidence	10-22
10.16.3	Setting a hearing date	10-22
10.16.4	Notification of hearing date	10-23
10.16.5	Using councillors or commissioners	10-23
10.16.6	Arranging the hearing	10-24
10.16.7	Directions and requests before or at the hearing	10-26
10.16.8	Distribution of officer's report to applicant and submitters	10-26
10.16.9	Information for hearings committees or commissioners	10-27
10.16.10	Status of the officer's report at the hearing	10-27
10.16.11	Conduct of hearing	10-27
10.16.12	Reconvening a hearing	10-28
10.16.13	Closing the hearing	10-28
10.17	Hearing decision report	10-28
10.17.1	Assisting the hearing committee or commissioner with decision	10-28
10.17.2	Decision format	10-28
10.17.3	Drafting the decision	10-29
10.17.4	Distributing the decision	10-30
10.18	Notice of decision	10-30
10.18.1	Statutory timeframes	10-30
10.18.2	Applicant	10-30
10.18.3	Submitters	10-31
10.19	Consent certificate	10-31
10.20	Commencement of consent	10-31
10.21	QA of consent documents	10-32
10.22	Wellington consent QA and invoicing procedure	10-32
Chapter 11	Restricted coastal activities	11-1
11.1	Criteria for restricted coastal activities	11-1
11.2	Distribution of application	11-1
11.3	Liaison with Department of Conservation and Minister's appointee	11-2
11.4	Recommendation of the hearing committee	11-2
11.5	The Minister of Conservation's decision	11-3
11.6	Commencement of consent	11-3
Chapter 12	Joint processing of notified consents	12-1
12.1	Criteria for joint notified consents	12-1
12.2	Notification	12-1
12.3	Submissions	12-2
12.4	Pre-Hearing meeting	12-2
12.5	Joint hearings	12-2
12.6	Decision	12-3
Chapter 13	Change or cancel resource consent conditions	13-1
13.1	Statutory basis	13-1
13.2	Procedure for processing application	13-1
13.3	Should the application be notified?	13-1
13.4	Minor changes to consent conditions	13-2
13.5	Notification of the decision on the application	13-2
13.6	Restricted coastal activities	13-3

Chapter 14	Review of consent conditions	14-1
14.1	When can we review consent conditions	14-1
14.2	How to initiate a review	14-1
14.3	Timing of the review	14-2
14.4	Notice of review to consent holder	14-2
14.5	Deciding on whether the review should be publicly notified	14-2
14.6	If the review is to be notified	14-3
14.7	Processing the review	14-3
14.8	Restricted coastal activities	14-3
Chapter 15	Resource consent charging	15-1
15.1	Charging policy	15-1
15.2	Application fees	15-1
15.3	Charging for pre-application advice	15-1
15.4	Cost estimates	15-1
15.5	Keeping track of charges	15-2
15.6	What to charge for	15-2
15.7	Additional charges or refunds to applicant	15-4
15.8	Internal charges	15-4
15.9	Invoicing by team leaders	15-5
15.9.1	Internal customers	15-5
15.9.2	External customers	15-5
15.10	Objections to additional charges	15-6
15.11	Annual charges	15-6
Chapter 16	Transfer, surrender, lapse and cancellation of resource consents	16-1
16.1	Transfer to another person on the same site	16-1
16.1.1	Processing the transfer	16-2
16.2	Transfer to another site	16-2
16.2.1	Notifying the application to transfer	16-3
16.2.2	Conditions on transferred permit	16-3
16.3	Surrender of resource consent	16-3
16.3.1	RMA requirements	16-3
16.4	Lapse of resource consent	16-4
16.4.1	RMA requirements	16-4
16.4.2	Extending a lapse date	16-4
16.5	Cancellation of resource consents	16-5
16.5.1	RMA requirements	16-5
Chapter 17	Certificates of compliance	17-1
17.1	RMA requirements	17-1
17.2	Procedures for certificates of compliance	17-1
17.3	Content of certificate of compliance	17-1
17.4	Status of certificates of compliance	17-2
17.5	Monitoring charges	17-2
Chapter 18	Consent guidelines and conditions	18-1
18.1	Consent duration	18-1
18.2	What to authorise by a single resource consent	18-5

18.3	Conditions	18-5
18.4	Specific conditions	18-6
18.4.1	Bond conditions	18-6
18.4.2	Review conditions	18-7
Chapter 19	Objections, appeals and inquiries	19-1
19.1	Objections to GWRC decisions and requirements	19-1
19.2	Appeals and inquiries	19-2
19.3	Replies to appeals and inquiries	19-5
19.4	Engaging counsel and/or consultants	19-5
19.5	Consent orders	19-6
19.6	Environment court	19-6
Chapter 20	Compliance	20-1
20.1	Compliance procedures manual	20-1
20.2	Compliance and consent processing	20-1
20.3	Unconsented activities	20-1
20.4	Consent supervision and monitoring charges	20-1
20.5	Updating CoCo	20-2
Chapter 21	Database QA	21-1
21.1	CoCo database	21-1
Chapter 22	Building consents	22-1
Chapter 23	Retrospective resource consents	23-1
23.1	Purpose	23-1
23.2	Procedure	23-2
Chapter 24	Emergency works	24-1
24.1	When can emergency works be carried out?	24-1
24.2	Who decides whether emergency works are needed?	24-1
24.3	Exemptions for emergency works	24-1
24.4	Resource consents for emergency works	24-1
24.5	Emergency works during a Civil Defence Emergency	24-2
24.6	Works that do not meet the emergency threshold and are covered by a Regional Plan	24-2
Appendix A	Swing Moorings: processing and compliance protocols	A-1
Appendix B	Summary table - legal applicants/consent holder	B-1

Chapter 1

Introduction

Scope of manual

The Resource Management Act 1991 (the Act) establishes the principles of sustainable management of natural and physical resources. Resource consents are one means of regulating and monitoring the use of resources. Tools such as national policy statements, regional policy statements and district and regional plans set the scene for the granting of resource consents in the context of the purpose and principles of the Act.

This Manual sets out the policies and procedures to be followed by the Greater Wellington Regional Council (GWRC) in both providing advice to applicants, and processing resource consent applications. The Manual is primarily for the use of staff directly involved in processing resource consent applications, but will also be of use to other staff and Councillors.

Changes to the manual

The Manual will be formally reviewed on an annual basis. However, the Manual is an evolving document and changes will be made as and when required. Events that will influence matters in the document are changes in legislation, regional plans, and the organisation of GWRC as well as developments in best practice and case law.

Chapter 2

Resource Management Act 1991

2.1 Types of resource consents

Part VI of the Act sets out the processes relating to resource consents. Section 87 of the Act defines the types of resource consents which may be granted to authorise activities restricted by sections 9, 12, 13, 14, and 15 of the Act, as follows:

Consent Type	Activity
Land Use Consent	<ul style="list-style-type: none"> • Activity contravening sections 9 or 13 • Constructing or altering a bore (where this is restricted in a regional Plan) • Building a structure on or over a stream or lake bed • Excavating and/or removing material from a river or lake bed • Installing a culvert or ford • Land clearing or tracking on erodible land (where this is restricted in a regional Plan)
Water Permit	<ul style="list-style-type: none"> • Activity contravening section 14 • Damming a watercourse • Taking and/or using water from a river, stream, dam, lake, spring, well or bore • Diverting water such as by piping or bridging or by realigning a watercourse (if there are any works in the bed of the watercourse, a land use consent is also required)
Discharge Permit	<ul style="list-style-type: none"> • Activity contravening section 15 • Discharging water or a contaminant to water • Discharging contaminant onto or into land in circumstances where it may enter water • Discharging contaminants onto or into land from industry or trade processes (including landfilling) • Discharging contaminants to air
Coastal Permit	<ul style="list-style-type: none"> • Activity in coastal marine area that would otherwise contravene sections 12, 14 and 15 • Carrying out the above activities in the coastal marine area, including reclamations, structures, disturbance, taking or discharging water, introduction of plants, occupation, shingle or sand removal.

This list serves only as a guide, you should be conversant with sections 9, 12, 13, 14 and 15 of the Act.

2.2 Policy statements

When you consider an application for a resource consent you need to have regard to the Wellington Regional Policy Statement and the New Zealand Coastal Policy statement 1994. Refer to section 104 of the Act.

2.3 Regional plans

Activities that can affect the environment are controlled by the Act. The Act allows some sorts of activities, e.g., the taking of fresh water for water supply to individual households and for drinking water for stock on single property provided that the taking does not adversely affect the environment. However, regional plans can restrict something that is otherwise allowed, and can allow something that is otherwise restricted through regional rules.

Rules in regional plans classify activities as-

- Permitted, in which case no resource consent is required provided you comply with the conditions in the rule
- Controlled, Restricted Discretionary, Discretionary, or Non-Complying, in which case you must obtain resource consent
- Prohibited, in which case the activity cannot be undertaken.

GWRC Regional Plan	Date operative
Regional Coastal Plan for the Wellington Region	19 June 2000
Regional Air Quality Management Plan for the Wellington Region	8 May 2000
Regional Freshwater Plan for the Wellington Region	17 December 1999
Regional Plan for Discharges to Land for the Wellington Region	17 December 1999
Regional Soil Plan for the Wellington Region	9 October 2000

2.4 Finding out what rule applies to an activity

The Environmental Policy section of GWRC have produced *Regional Plans: User Guide to Rules of the Wellington Region* to help you find out what activities are controlled by Regional Plans and under which section of the Act.

This guide is a useful starting point if you are unsure of which section of the Act and/or regional plan rule applies to a resource consent application.

Where a consent is required under the Act but the activity is not covered by a regional plan it is said to be *innominate* (latin for unnamed). Under section 77C(1)(a) of the Act an application for an innominate activity is treated as though it were discretionary.

2.5 What happens if a plan changes

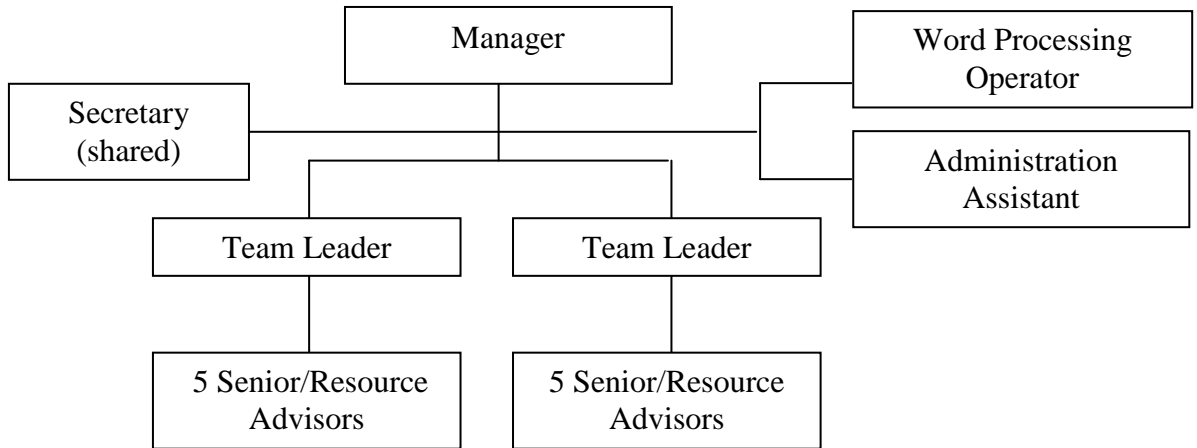
From time to time changes will be made to regional plans. These changes are publicly notified and go through a formal submission process. If a permitted activity has a status change (e.g., to controlled), that change comes into effect as soon as it is notified as the activity is no longer permitted in a regional plan and a proposed regional plan.

Conversely, if the status of an activity changes to permitted, that change does not come into effect as soon as it is notified. Instead the change comes into effect if the rule is not submitted on, or if there are submissions when GWRC makes a decision and there are no appeals, or when all appeals are resolved.

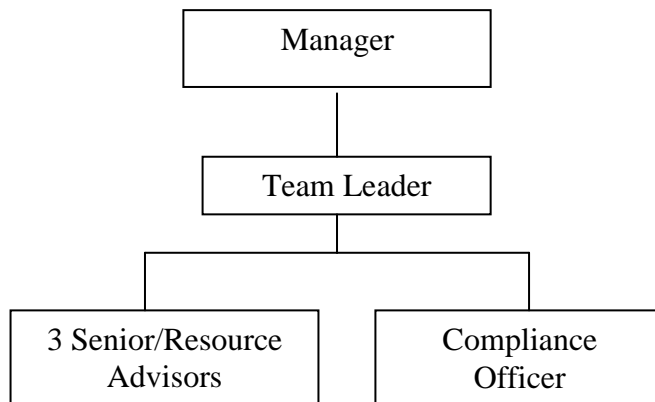
Section 88A states that when the status of an activity changes during consent processing (e.g., through a proposed plan being notified) you should continue to process the application as if the status of the activity is unchanged.

Chapter 3 Office structure

3.1 Environmental Regulation Department (Wellington)



3.2 Environmental Regulation Department (Wairarapa)



3.3 Roles and responsibilities

Manager

The Manager is ultimately responsible for the day to day running of the department and ensuring consents are processed within the statutory time frames. The Manager has the responsibility and delegation to grant non-notified resource consents and to grant consents, that are notified or where notice is served, that do not require a hearing.

Team leaders

Team leaders are responsible for the initial receipt and setting up of the consents. They assign consents to a resource advisor depending on workload. The team

leaders are also responsible for the additional charging or refunding arising from the processing of the application.

Team leaders process the annual compliance charges associated with the monitoring of resource consents.

Resource advisors

Resource advisors are responsible for the processing and issuing of resource consents. Resource advisors are assigned to particular resource consent applications on the basis of their area of expertise and the departmental workload. For relatively straightforward applications, applications will be passed directly to a resource advisor. More complex applications may require some discussion to determine the most appropriate resource advisor/s to handle the application.

Your team leader has the ultimate responsibility to ensure that the workload is appropriately distributed.

The processing officer has the task of managing an application through its various stages and has the responsibility to ensure that processing events are completed and that time limits are met. The processing officer will determine when assistance is required from other staff or departments, or if expertise from outside GWRC is required. The means for seeking assistance outside the group is described in 10.6 and 10.8. The processing officer should always refer back to the team leader if there appear to be difficulties with an application.

For larger applications, a *buddy* will be assigned to help the processing officer. It is the buddy's responsibility to help the processing officer with the administration of the consent, as well as peer review the officer's report and write the decision for the hearing committee, if the consent is notified. Check standard from F40 The "buddy" guidelines to ensure all aspects of consent processing are covered.

3.4 Delegations

A number of GWRC's functions under the Act have been delegated to Committees and/or officers of GWRC. An up-to-date electronic copy of the GWRC's Delegation Manual is located on the GWRC Intranet. Some delegations will be referred to in the relevant section where appropriate.

Chapter 4

Resources available

4.1 CoCo database

CoCo is the Environmental Regulation computer database used to store and retrieve information on resource consents. CoCo is used to:

- track applications through the various steps of the application and granting process
- store information on all current consents
- archive expired and surrendered consents

The time taken to complete processing stages in consent processing is one of the means used to measure the Department or Section's performance. It is therefore essential that all staff are familiar with CoCo and maintain up-to-date information on applications being processed.

This Manual does not contain a description of how CoCo operates, however when an input to CoCo is required at a particular stage, it will be referred to. Detail on the CoCo Database can be found in the CoCo User Guide.

4.2 Resource material

GWRC subscribes to a number of useful publications which will enable officers to keep up-to-date with current cases and interpretations of the Act. Each staff member will be provided with a consolidated version of the Act which includes the Resource Management Amendment Act 2005.

Each office also has available copies of *Brookers annotated version of the Act* as well as an on-line version. The Brookers version contains reference to relevant cases and provides a commentary to the Act. It also includes the Building Act and Crown Minerals Act.

Both offices of GWRC receive *Brookers Resource Management Gazette* and *Butterworths Resource Management Appeals*. These resources can be found in the library. Both of these publications contain useful resource information. The Butterworths publication primarily contains records of Environment Court decisions. The Brookers Gazette gives a weekly summary of Environment Court cases, Court decisions, local authority hearings, applications, news items of interest and reviews of relevant publications. The Brookers Gazette is published weekly and is available through the Councillors Information Bulletin or the on-line version of Brookers.

Full copies of Environment Court decisions are available directly from the Environment Court, for a charge. These can be obtained through the GWRC Library. The Environmental Policy Department keep copies of relevant decisions which are sent regularly by the Court. The Environmental Policy Secretary

maintains these files. The GWRC Library has access to a database of all Environment Court decisions.

The Environmental Policy Department also has a copy each of *Salmon's Resource Management Act 1991* and *Resource Management Handbook*, both published by Data Services. The Resource Management Handbook contains lists of decisions and their subject matter and Practice Notes on different aspects of the Act.

The ITSS Department circulates publications to interested staff. Publications may be requested through the Librarian.

4.3 Forms, standard letters and brochures

4.3.1 Application forms

We have a set of customised forms for resource consent applications which include the information requirements of the Act and CoCo.



You should generally encourage applicants to use these forms rather than the Form 9 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003. They are easier to fill out and the applicant is less likely to miss out on providing important information. However, there will be occasions where Form 9 is more appropriate and all applicants should be given the opportunity to use the option that is best for them.



Each consent type has a separate application form. Each application form has a different number and is photocopied on colour paper. Form 1 is a general form for the basic information common to all consents. PDFs of these forms are available on the GWRC website.

4.3.2 Brochures



We have the following brochures available:

- Applying for a resource consent
- Making a submission on a resource consent application
- Resource consent information
- Consulting iwi
- Resource consent timeframes
- Pre-hearing and hearing meetings
- Objections and appeals

These brochures are intended to provide useful information to applicants, submitters and consent holders, and are updated periodically to ensure consistency with legislation and best practise.

4.3.3 Standard letters



We also have a series of standard letters to assist you. They are available on PowerDocs CMM/01/06... While the standard letters will be acceptable for routine matters there will always be situations where you will either need to

modify them or draft new letters. When deciding whether a standard letter is appropriate you should be satisfied that it is clear and useful for the customer. If the customer would be better served by a new letter then you should not use the standard letters. A register of standard letters is maintained by the Word Processor Operator. Hard copies of standard letters are kept in a folder at the Help Desk.

Chapter 5

Pre-application procedures

5.1 Pre-application discussions

It is generally helpful, to both ourselves and the applicant, if the applicant is able to discuss the application with a staff member before lodging it. Pre-application discussions enable you to be familiar with the nature of any applications before they are made, ensures that the applicant is aware of what information should be provided, and that the correct consents have been applied for. Processing of applications is generally simpler, quicker and less costly if the applicant has already sought GWRC's advice and consulted with anyone who may be affected by the activity.

Prospective applicants should also be given copies of the brochures appropriate to their proposed activity.

§ Generally we provide one hour of free pre-application advice. If you think that the prospective applicant needs more than one hour of our time then you must discuss the matter with your team leader first.

5.2 New applications

Ideally, applicants intending to commence a new activity should discuss their proposal with GWRC officers to confirm what consents are required, the scale of effects, affected persons, and the scope of the Assessment of Effects.

For minor activities this can be achieved by a telephone discussion and/or a site visit (if necessary). For major applications more than one meeting with GWRC officers may be necessary. If there are likely to be applications to other consent authorities, the meeting should also involve appropriate staff from the other authority. It may also be necessary to include your team leader or department manager in the pre-application meeting.

A record of all pre-application advice given should be kept by filling out the *Pre-application form for consents* (F48) and placing it in the folder at the Help Desk. All related documents should be filed under the appropriate ENV/01/13** file. In this manner, the pre-application folder is an index, with all information stored in the Greater Wellington centralised filing system.

☺ Following pre-application discussions the applicant should know:

- the appropriate consent(s) to apply for, where to collect the correct application forms, and whether you are aware of any consents that are likely to be required from any other authority;
- the relevant issues and the scope and detail of the information required to support the application(s);

- the parties likely to be affected and that consultation, while not mandatory, may be beneficial before the application is lodged, including names and addresses of any specific contacts (see section 5.4, below);
- an indication of how GWRC is likely to assess the application, including whether the application is likely to be notified, whether GWRC will be engaging consultants to assist with the application, etc;
- what procedures will be used to determine whether the application will be notified or not and the criteria for non-notification or limited notification;
- what relevant information GWRC holds which may assist the applicant;
- the basis for charging the cost of assessing and processing the application (see chapter 15), the application fee required, and an estimate of the likely cost, if different from the application fee. For consent applications that are likely to exceed the standard application fee a written estimate of costs should be provided.



If a meeting is held, the information should be confirmed in writing as soon as possible after the meeting.

It is essential that we provide the applicant with a clear understanding of the situation. In some circumstances you or the applicant may wish to follow up the meeting with a letter setting out the points discussed. When you do not know the answers to questions you must say so.

Where possible we should also provide applicants with a brief assessment of any risks of their proposal. It is quite common for applicants to fail to recognise the adverse effects of their proposal or to dismiss those effects as minor or of no consequence. It is therefore important that we outline any likely issues so that applicants can find their own solutions. Nevertheless, it is vitally important that we do not just come up with problems. You should always attempt to suggest a solution (or better still a series of alternative solutions) to any difficulties that you may identify.

As with all our work we are there to provide our customers with options and choices. It is up to the applicant how they proceed.

5.3 Joint applications

During pre-application discussions, the applicant should be asked if they have had discussions with the relevant territorial authority to establish whether any consents are required from them.

If not, then they should be advised to do so. In addition, you may need to ascertain for yourself whether any territorial authority consents are required.

For significant activities, once it has been established that there will be a joint application, a meeting should be held between the processing officer, the team leader for the application, and the appropriate officer of the territorial authority to

establish the procedure to be followed. Minutes should be kept of this meeting clearly outlining the responsibilities of the respective authorities. There is also a “check sheet” (F28) for joint applications.



Once the processing officer and the territorial authority have agreed on what responsibilities each council will undertake, a letter should be sent to the territorial authority detailing the decisions made.

Joint hearing procedures are being re-established with the local authorities in the western region and are being developed by the Wairarapa office. These procedures include pre and post-application liaison.

5.4 Consultation

The Fourth Schedule of the Act requires all applicants to identify the consultation undertaken, if any, with any interested or affected persons before lodging a consent application. The scope of the consultation required should correspond to the scale of the proposed activity. Applicants should be given as much assistance as possible to identify any affected persons.

While the advantages of pre-application consultation should also be pointed out to an applicant the extent and nature of any consultation is entirely up to the applicant. If an applicant chooses not to consult then that is their business and should not have any effect on the manner in which the consent is processed (see Chapter 9, *Making the notification decision*). Under section 36A of the Act (as amended in 2005) it is now explicit that the applicant has no duty to consult about resource consent applications.

Consultation will identify likely potential and/or actual environmental effects, and help to develop ways of overcoming or mitigating the effects. Consultation will also act as a guide to the amount of public concern surrounding an application, allowing this to be discussed directly between the applicant and the parties concerned and thus defusing some areas of potential conflict prior to the application being made.



While GWRC does not have a statutory role in these discussions, assistance can be given to the applicant and/or any interested parties on clarification of any procedural matters. The Act requires the applicant to carry out the consultation, not the GWRC (but note the position on iwi consultation for notified activities, see Chapter 10).

In **most** cases the parties that may be consulted will come from the list below:

- owners/occupiers of the land;
- owners/occupiers of adjacent and/or downstream land;
- territorial authority;
- local iwi;

- GWRC Flood Protection Group or city/district council drainage department if activity in bed of river or lake;
- Wellington Fish and Game Council;
- Department of Conservation;
- Historic Places Trust;
- Ministry of Agriculture and Fisheries;
- Ministry of Transport;
- Public Health Service;
- National and local environmental groups;
- Harbour user groups, for coastal permits.
- Residents association

5.5 Replacement consents

The Act does not mention replacement consents and thus every consent application is technically a new application. However, that does not recognise the fact that from time to time applicants seek to obtain a new consent to carry on an existing activity for the sake of convenience we will refer to those applications as replacement consents. Replacement consents afford the opportunity for us to reduce processing costs particularly when the activity has a history of monitoring and the effects are well documented.

Section 124 of the Act provides for a consent to continue after the expiry date pending the obtaining of a new consent provided:

- (1) an application for a replacement consent is received by GWRC more than six months before expiry; or
- (2) an application for a replacement consent is received by GWRC three to six months before expiry and GWRC agrees to the continuation of the expiring consent.

The discretion to allow a consent to continue under (2) has been delegated to the department managers. Generally, an application under (2) will be approved by departmental managers unless the activity is having significant environmental effects, applicant has been remiss, has a poor compliance record or there are other reasons why the continuation should not be granted.



If an applicant wishes to continue exercising their consent, and they have applied to GWRC between three and six months of the consent expiring, you should prepare a brief memo to the departmental manager explaining the situation. Your memo should recommend whether the continuation should be

granted, and setting out your reasons for the recommendation. It is important that you document this process as the applicant may object to any refusal to grant a continuation. Use Standard Letter L6 Permission to continue operating. Send original to consent holder and retain a copy on file.



The 2005 Amendment Act contains new provisions to apply to some replacement consents (section 124A-124C). These provisions are not effective until August 2008, but have been established to provide a process where existing consent holders are given priority over new applicants when they apply to replace an existing consent.

Chapter 6

Time frames, extensions and waivers

6.1 Time limits

Calculating timeframes

The Act imposes the following time limits on consent processing:

- Publicly notify or serve notice on affected parties within 10 working days of the application being lodged (section 95 of the Act);
- Commence hearing no later than 25 working days after the application is lodged (section 101(2) and 101(2A) of the Act), or no later than 40 working days where the pre-circulation of evidence is required (section 41B(5) of the Act); and
- Give notice of a decision on an application, where a hearing is held, no later than 15 working days after the hearing is closed. Where no hearing is held and application is non-notified, give decision no later than 20 working days after application lodged. Where no hearing is held and the application is publicly notified or notice served, give decision no later than 20 working days after submissions close (section 115 of the Act).

Figure 1 below shows consent processing timeframes in situations where provisions under the Act, such as the pre-circulation of evidence, are not used. In reality, Figure 1 represents the processing timeframes for most of the consent applications which we process.

The time limits may be extended under certain circumstances and these are discussed further in section 6.3.

While there is no penalty in the Act for failing to adhere to time limits, the onus is clearly on us to ensure that time limits are met. There is also a requirement under section 21 of the Act to avoid unreasonable delay.

Timeframes which are excluded

Section 88C of the Act outlines the situations in which consent processing time is excluded from statutory timeframes as follows:

- When further information requested under section 92 of the Act (see Chapter 10.5.3);
- Where a report on an application has been commissioned, with the agreement of the applicant, under section 92 of the Act (see Chapter 10.6.3);
- Time taken by the applicant in trying to obtain written approvals under section 94 of the Act, regardless of whether the approvals are obtained (see Chapter 10.3); and

- Where an applicant has been referred to mediation under section 99A of the Act (see Chapter 10.13)

In these instances, the 'clock' should only be started again when all requirements of the s92 request for further information have been met, a commissioned report or written approvals have been received, or mediation is concluded.



When calculating timeframes the following good customer service rules apply:

- A maximum of one working day, after an application is received by the processing officer, should be taken to determine if an application is complete in terms of section 88, then the 'clock' should start.
- When calculating the time taken to process a notified consent do not include the time from the commencement, to the conclusion of the hearing.

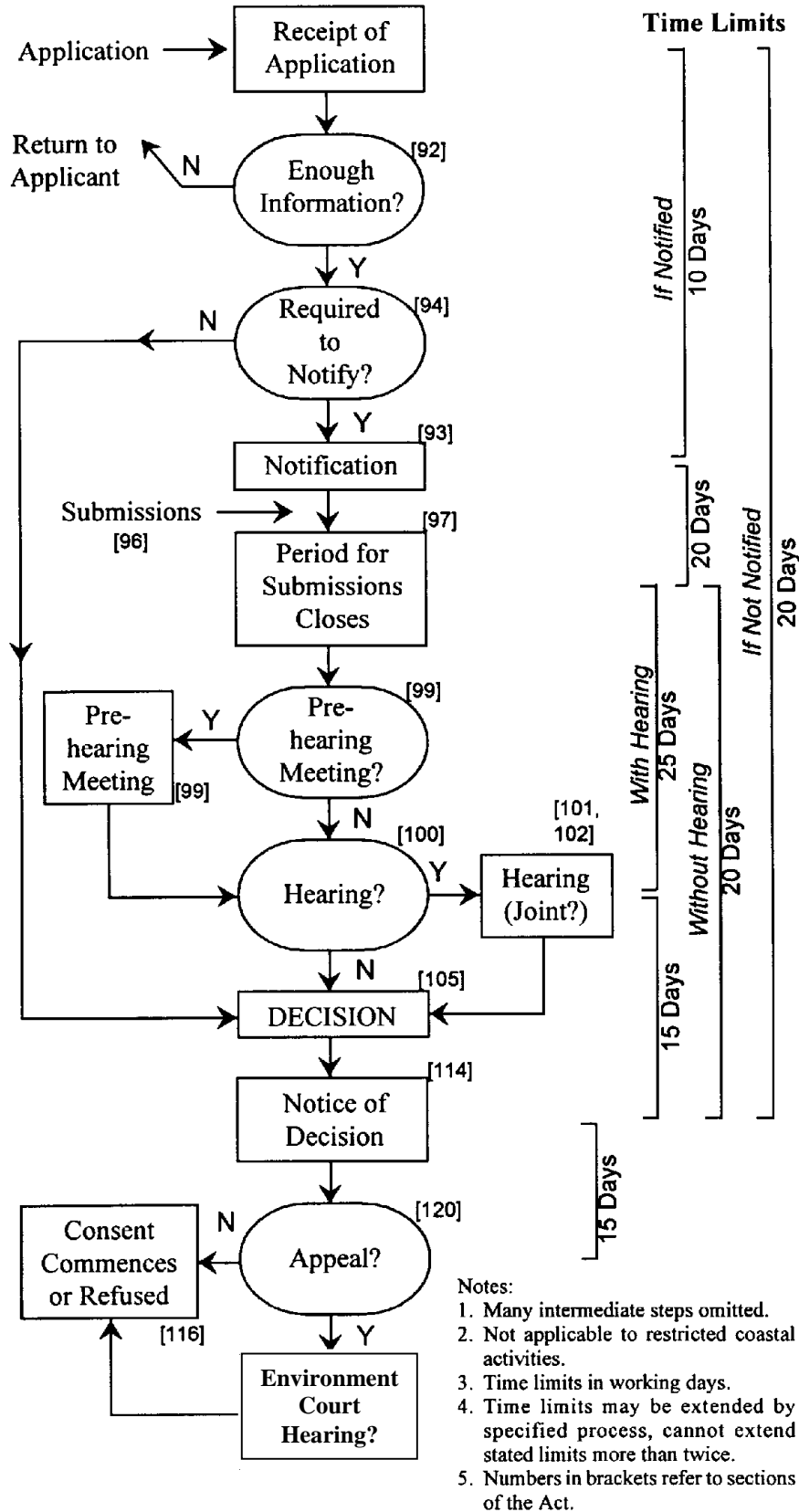


Figure 1: Flow chart of working days

6.2 Working days

Working days referred to are defined in the Act as:

any day except:

- (a) *a Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's Birthday, and Waitangi Day; and*
- (b) *a day in the period beginning on 20 December in any year and ending with 10 January in the following year.*

6.3 Waiver or extension of time limits

6.3.1 Things you must take into account when waiving or extending times

The waiver or extension of time limit is done after consultation with the involved parties and GWRC must take into account:

- the interests of any person it considers may be directly affected by an extension or waiver;
- the community interest in achieving adequate assessment of the effects of the proposal;
- the duty to avoid unreasonable delay (section 21 of the Act).



The authority to exercise this discretion is delegated to the department manager. If you wish to waive any requirement (other than time extensions) you should provide the departmental manager with a brief report about what you wish to do and why (a memo will be fine for minor matters). A copy of the report and the manager's decision must then be placed on the file.

6.3.2 Extensions requested by GWRC

Section 37(1) of the Act allows the extension of the specified time frames. Any extension under section 37A(2)(a) shall not have the effect of more than doubling the maximum time specified in the Act.

If an extension will more than double the specified time period, the applicant's agreement is required (section 37(A)(2)(b)). The extension of time limits is normally used for notified consents to increase the likelihood of resolving submissions and negating the need for a formal hearing.

NB: A time limit can be extended *after* it has expired (section 37(1)(a) of the Act).

The delegation to extend time under section 37 lies with the Department Managers.

Extensions of time under section 37 should only be used where there are good reasons and the delay in processing the application is beyond your control. They are not to be used to manage workloads or for other purposes.

The follow reasons are considered appropriate and good practice for time extensions.

- extended time needed to coincide with routine Council meeting, Councillor or Commissioner (includes DOC representation of an RCA) availability for a hearing;
- extended time needed to coincide with routine notification cycle;
- applicant and/or submitter(s) wish to have particular consultant/lawyer at hearing;
- extended time needed to have further consultation and gain agreement on consent conditions through the pre hearing process thus negating the need for a hearing;
- extended time needed for hearing committee decision if after the public has been excluded, the decision takes longer than 15 working days; and
- extended time needed to review complex AEEs and obtain technical advice, e.g. from external consultants.

To extend any time limit:



- **Best practice** - the processing officer completes the standard Extension of Time Limit form (L34) to be signed by the Department Manager. The form must state the reason for the extension and specify the new time limit within which the action is to be undertaken if relevant;



- the processing officer immediately notifies (in writing) to all parties who are directly affected by the extension (e.g. submitters), and explains the reasons for the extension and the new time limit;



- the time limit is extended on CoCo. (See CoCo user guide).

6.3.3 Extensions requested by the applicant

Extensions under **section 37A(2)(b)** are slightly different. These extensions are at the request of the applicant and may be for an unspecified time. The process is essentially the same as for a section 37(A)(2)(a) extension except that it is instigated by a written request from the applicant.



On receipt of a written request from the applicant, the processing officer completes the *Extension of Time Limit Form (L46)*. The form must state the reason for the extension and be given to the Department Manager for signing.

Best practice - If the extension is with the agreement of the applicant then the applicant should also sign the *Extension of Time Limit Form*. If it is as a result of a written request of the applicant they do not need to sign the form – but the request should be stapled to the form.



The processing officer immediately notifies (in writing) to all parties who are directly affected by the extension, and explains the reasons for the extension and the new time limit. Send a copy of the *Extension of Time Limit Form* to the applicant.



The time limit is extended on CoCo. (See CoCo user guide). This is modified through the stages screen.

You must be satisfied that the applicant has a genuine reason for seeking to extend time. In particular we should not extend time under section 37 where an applicant is seeking to renew their consent and is using section 37(A)(2)(b) to simply extend the lifetime of their old (and presumably less restrictive) consent. This practice is an abuse of the system and we need to ensure that it is not allowed.

6.3.4 GWRC waiver of information requirements

GWRC may also waive any failure to comply with a requirement to provide information under the Act, Regulations or any Plan (section 37(1)(b) and 37(2) of the Act) relating to:

- the time or method of service of documents, or the documents to be served (taking into account the matters in s37(A);
- inaccuracies in the information supplied;
- any step in the procedure that is omitted.

GWRC can waive compliance with any of the above requirements or direct that the inaccuracy or omission be rectified. An example of when this would be used is when someone has applied for the wrong type of consent, or some incorrect information is supplied and GWRC has access to the correct information.

It is important for you to note that we can not waive an inaccuracy when the notification of the consent is incorrect as it may prejudice parties who may wish to submit on the application. Accordingly, it is essential that we notify applications correctly.

To waive a requirement you must write a brief report to the Department Manager who then authorises the waiver.

Chapter 7

Consent administration

7.1 When the resource consent application arrives

External applications

Consent applications generally arrive to the department through the internal mail. The application will have been date stamped and logged by the Information Technology and Support Services (ITSS) section and the application fee (if enclosed) will have been sent to the Finance department.

If an application arrives at the help desk or at the main GWRC reception, it must first be taken to Information Services, so that it can be date stamped and logged.

Once an application has arrived in the department, it is given to a team leader to set up the consent file and enter the consent details onto CoCo and customer details onto SAP.

Internal applications

It is helpful if the internal applicant is able to advise us when their application is to be lodged so that we can check back with that customer if it's not received and also be better placed to process it quicker.

All applications should be lodged at the second floor so that they can be stamped in with the received date. The internal applicant should not in the first instance leave the application with the staff member who provided the pre-application advice.

There is no need for the internal applicant to include an application fee.

If the internal applicant feels their consent is urgent, once the application has been "stamped in" they may deliver it personally to either one of our team leaders or the staff member on our environment help desk.

7.2 Setting up the file

A file for the consent application is set up in the following manner:

7.2.1 Consent numbering

All resource consent applications are numbered as follows:

WGN YY0000 [00000] for applications to the Wellington office; or

WAR YY0000 [00000] for applications to the Wairarapa office.

Where YY = year, a two number code for the year in which the application was received.

0000 = the sequential number for the consent (numbering starts for applications received at the start of each calendar year, in the Wairarapa, and financial year in Wellington). For the year 2000 the Wairarapa office have started numbering the first consent from 201, to avoid setting up duplicate charge codes.

[] = the CoCo unique identification number (automatically generated by CoCo).

Note that in the Wellington office there are consent files for water rights inherited from the Manawatu-Wanganui Regional Council. These consents are prefixed MWT. As these expire they will be replaced by WGN numbers.

Each file is numbered with the application number(s) and the applicant's name recorded on the front cover.

If more than one volume of a file is required, the volume number is recorded on the front cover and a cover sheet placed on top of the completed volume stating that the volume is full and given the following volume number.

In Wellington, all incoming applications are recorded in the Applications Register (The Blue Book). The Applications Register is a record of:

- the date the application was received in the office;
- which iwi the application was sent to
- the applicants name
- file number given
- application identification numbers given by CoCo
- the application fee received
- a brief description of the application
- whether an invoice/refund was sent and the value of it (to be recorded once the consent is granted)
- whether the application is for renewal
- which officer is processing the application

7.2.2 Charge codes

Time spent on processing applications is charged to each consent application. (see Chapter 15 for what to charge. The charge code for each consent is derived from the consent number and is set up on SAP through the SAP/CoCo interface. In Wellington, the charge code is recorded on the yellow form (F3) for the processing officer to refer to. The charge code can also be derived from the consent number.

The charging codes are as follows:

335/YYXXXX/1 for the Wellington office

782/YYXXXX/1 for the Wairarapa office

335 = first two digits of job code to be recognised in finance as
Consents

782 = first two digits of job code to be recognised in Finance as *Environmental Regulation Group*

YY = financial year of application

XXX = sequential number of the consent

/1 = for consent processing

e.g... consent number: WGN 000126 = job number: 335/000126/1

consent number WAR990126 = job number 782/990126/1

7.2.3 Forms and checklists to be Included on the file (Wellington office only)

The following forms and checklists are placed on the file by the team leader for the job manager to use during the processing of the consent application. A register of these Standard Forms is maintained by the Word Processor Operator. Standard Forms are available electronically in PowerDocs CMM/01/05/06.

A Green Non/Notified Application Form (F1 and F2) that is used as a hard copy record of the dates which the different stages occur on;

A Red Record of Decision Form (F5) that is used to record the decision on whether or not to notify a consent;

A Yellow Resource Consent Application Cost Sheet (F3 and F4) that is used to record time spent on the application and the value of the deposit received;

A Grey Database QA Checklist (F9) that is used once the consent has been granted to ensure all information entered in CoCo is correct;

A plastic sheet protector that is used to place the consent in once it has been granted.

7.2.4 Iwi involvement

GWRC has an agreement with the various Tangata whenua regarding consultation for non-notified resource consents. A copy of each of the agreements are held on file X/16/5/.. Under this agreement a copy of all non notified consent application must be faxed/sent to the relevant iwi (unless the activity is controlled or restricted discretionary).

The iwi have between two and five days to respond as to whether they wish to comment on a consent application. It is therefore important, to ensure the application are faxed, or posted as quickly as possible so that iwi response does not hold up the processing time.

Area	Iwi
Otaki Area	- Ngati Raukawa ki te Tonga
Waikanae/Paraparaumu/Raumati	- Te Atiawa ki Whakarongotai
Paekakariki/Porirua	- Ngati Toa Rangatira
Wellington/Hutt Valley	- Wellington Tenths Trust
	- TeAtiawa Taranaki ki te Upoko te Ika a Maui
Wairarapa	- Ngati Rangitane
	- Ngati Kahungunu

In addition you have a duty to be “on inquiry” and consult with iwi for resource consent applications. It is particularly important that you offer iwi the opportunity to discuss notified consents with you.

If you are in doubt which iwi should be sent the consent application, call the representatives of each iwi you think may need to be consulted or see the Iwi Liaison officer in the Environmental Policy Department for advice.

7.3 Initial set up of consent on CoCo

Once the consent file has been set up details need to be entered on to CoCo. The team leader will complete the initial set up

The team leader enters the following information on to CoCo before passing the application on to the processing officer:

- the resource use
- file reference
- the processing officer
- the applicants details
- any other contacts details
- financial information, including setting up the job number through the SAP/CoCo interface.

(For details on how to enter this information and how to use the SAP/CoCo interface refer to the CoCo User Guide)

7.4 Fees

In the Wellington office, cheques sent with applications will be removed by Information Services and forwarded to Finance with a photocopy of the front of the application. This money is held in a holding account until Finance is advised of the application's project code.

Applications which are hand delivered must be first taken to Information Services Department to be recorded as incoming mail and to have the cheque deposited.

If an application requires urgent attention, the front page should be photocopied and left with Information Services with the cheque attached. Under no circumstances should cheques be left on desks.

In the Wairarapa office, cheques are delivered to Environmental Regulation with the application and are receipted by Environmental Regulation. The receipt number, amount paid and date are recorded on Form 1 in the fees box. The cheques are then forwarded to Finance.



If no money is sent with an application, the applicant should be advised immediately in writing that the application is “incomplete” (see chapter 8) and that it will not be processed until the correct fee has been paid. It is important that we are quite strict in this area as our level of bad debtors can rapidly increase.

Applicants may, if they wish, deposit fees directly into the Council’s bank account. Our account number is 06-0582-0104781-00.

7.5 Internal circulation of applications received

27/06/06

In Wellington, every week, the Administrative Assistant circulates, via email, a list of all applications received in that period to interested GWRC Environment Management Division staff including Environmental Regulation staff and the Divisional Manager. This list is also sent to DoC allowing them the opportunity to become involved or comment. This list is not to be used instead of direct contact with a Department on a particular application.

The report is produced, either by noting entry information in the team leaders’ Blue Book or by running an IMPROMPTU report (a reporting tool) called *Consents Lodged.imr*. The report is stored on L: drive in the reports folder.

7.6 Filing of information

General consent information

Information Services maintains a central filing system for the whole GWRC. Within this filing system there are three main department codes that will be referenced by the Environmental Regulation Department.

The CMM series relate to - management of the Environmental Regulation Department

The ENV series relate to - issues that concern the whole division

WGN series - resource consent file
 - WGN – Wellington consents
 - WAR – Wairarapa consents

An up-to-date list of the files available can be found via PowerDocs explorer.

Information relating to specific consent applications

All correspondence relating to a resource consent application must be placed on the file relevant to that application. Once a consent is granted all correspondence regarding that consent should be dated and placed on the same file. The information must also be put on the electronic file using PowerDocs.

Where relevant the WGN file should be segmented as follows:

- 01 = General
- 02 = Submissions/Pre-hearing
- 03 = Officer's Report/Hearing
- 04 = Decision
- 05 = Compliance
- 06 = Appeals
- 07 = Enforcement
- 08 = Press Releases/Newspaper Articles
- 09 = Legally Privileged
- 10 = Future Developments
- 11 = Review of consent conditions (s128)
- 12 = Change of consent conditions (s127)

Storage of files being worked on

27/06/06

Any files being worked on should be put in the cabinet for security purposes, if the resource advisor is going to be absent for a period of time. To retain the integrity of the filing system, it is essential to minimise the number of files stored by each resource advisor.

Access to resource consent files

Resource consent files are kept in the library. Any GWRC staff member may have access to resource consent files. Files are also made available to the general public on request. However, where information on files has been requested you must inform the requester where a legally privileged file exists. Legally privileged material and confidential information associated with a consent file is not available to the general public. If a member of the public wishes to view a file they can do so, however they must not take the file from the building.

Short term file loans

To take a file out of the library you must inform the records section of the library so they can issue the file to you. Any other person wishing to view the file can find out where it is.

Legally privileged information

Any information pertaining to a file that is legally privileged is stored on the legally privileged 09 file segment. This information is confidential and should not be released and can be withheld under Section 7 of the Local Government Official Information and Meetings Act 1987.

Sensitive information

From time to time we receive consent applications that contain commercially sensitive information or information that pertains to the location of a waahi tapu site. Section 42 of the Resource Management Act allows access to this type of information to be restricted. Information that is commercially sensitive is marked 'confidential' and stored on the legally privileged file.

Archiving of files

In the Wellington office, every year all files stored in the cabinets, will be assessed as to whether they can be archived. Files that are for one off consents, such as culverts, that have had their final compliance inspection, can be archived. All files stored in the library will be retained until we advise the library staff that they can be closed and/or archived.

Archived files

Files that have been archived are usually stored off site. To retrieve a file that has been archived you need to call or email the Information Services section who will arrange for the file to be delivered.

Chapter 8

Initial assessment of application

8.1 Incoming consent application

All incoming consent applications are date stamped by Information Services when they arrive at GWRC. The date stamp is the application's 'lodgement date' (unless the application is determined as 'incomplete' in terms of section 88 of the Act).

8.1.1 Determine whether application is complete

The processing officer determines whether or not the application should be officially received as complete in terms of section 88 of the Act. The following needs to be present for the application to be complete:

- (a) An application in the prescribed form and manner (As per Form 9, Resource Management (Forms, Fees, and Procedure) Regulations 2003), i.e.,
 - Correct application fee;
 - Name and address of applicant and owner/occupier of land relating to the application;
 - Description of activity and its location;
 - Any information required by a plan and by regulations;
 - Type of consent sought and other resource consents required; and
 - Date and signature of applicant (or person authorised to sign on behalf of applicant)
- (b) An assessment of environmental effects in such detail that corresponds with the scale and significance of the effects that the activity may have on the environment in accordance with Schedule 4 of the Act.

The purpose of your check is to ensure that the appropriate information has been provided. It is not a thorough check of the information's level of detail or accuracy, i.e., it is checking for completeness not correctness.

- ☆ Best practice - is to take no more than one working day from being given the file by your team leader to determine whether the application is formally 'received'.

8.2 Checklist for assessing adequacy of AEEs

- Has the effect been adequately assessed?

- Is the assessment accurate? (is it based on sound predictions or just guesswork?)
- Has the consent of all affected parties been obtained?
- In the particular environment, is the effect likely to combine with any other identified effect (be cumulative)?
- Are there any mitigation measures proposed?
- What is the effect's significance judged to be?
- If the effects are not minor, are the remaining effects acceptable?
- Do you need any more information before the above questions can be answered?
- Are all matters from Schedule 4 of the Act included?

8.3 Verify lodgement requirements on CoCo

Complete applications - The processing officer verifies on CoCo that the lodgement requirements have been met, i.e., that the prescribed application information is complete and the required application fee received. The lodgement dates entered into CoCo should be the same as the received date stamp on the application as this is the date from which the statutory timeframes are calculated.

Incomplete applications - Where the application has been determined as incomplete in terms of section 88, then you "Refuse" the application in the "Lodgement" stage of CoCo giving the reason. The application status is then changed to "Not accepted for processing".

8.4 Determining an application as 'incomplete'

If an application does not include an **adequate** assessment of effects or the **information required by regulations** you may determine that the application is 'incomplete'. Check with a senior resource advisor or team leader first.

You have five working days from when the application was lodged (i.e., when date stamped) to determine the application as 'incomplete' and return the application with written reasons to the applicant (use standard letter L69).

Photocopy the application and send back the original application or the parts of the application that are 'incomplete' to the applicant. The applicant may advise whether they want their application fee to be retained by GWRC or refunded. See the Accountant, Environment Division if the applicant requests their fee returned. (The applicant's fee should be refunded less any time spent on assessing the application).

Note the applicant has the right under section 357(1A)(a) of the Act to object to your determination of their application as "incomplete". The applicant may

also appeal to the environment court under section 358(1) of the Act against the decision on their objection.

8.5 Resubmitted applications that were determined as incomplete

The resubmitted application is to be treated as a new application. The team leader will assign a new CoCo ID number. The original WGN number will be retained.

If the application fee was retained then carry over any time spent on assessing the original application to the new application.

8.6 Withdrawal of a consent application

A consent application can be withdrawn by the applicant or requested by the processing officer after assessing the application and it is found that resource consent is not required. The applicant should give notice, either by completing a withdrawal of consent application form (F22) or by writing to advise GWRC that they no longer intend to carry out works which required resource consent.

The withdrawal of a consent application becomes effective after GWRC send the applicant a notice of acceptance (usually a letter). The processing officer will send the notice of acceptance to the applicant. When a withdrawal is accepted, the processing officer should update the application status field on CoCo and enter a withdrawal date and a reason for the withdrawn application.

Chapter 9

Making the notification decision

9.1 Introduction

Deciding whether a resource consent application should be notified or not can be difficult. Like most difficult decisions it is also very important. If you notify unnecessarily then you will cost the applicant thousands of dollars (not to mention the ill will that will be engendered). On the other hand if we do not notify when we should then we are subverting the intent of the Act and preventing the public from having its rightful say – an equally unpleasant outcome.

In the case of discretionary, restricted discretionary and non-complying activities, the first issue to determine is whether the adverse effects on the environment will be minor or more than minor. If the level of effects are more than minor then the only option is to publicly notify the application.

If the effects are minor then we need to consider whether there are adversely affected persons. If all adversely affected persons have given their written approval then we must disregard any effects on these people and the application can be non-notified. Where we do not have the written approval of all adversely affected persons the application can be considered on a limited notification basis.

In determining whether the effects are minor we can disregard effects if the relevant plan permits an activity with that effect. This is known as the ‘permitted baseline’ concept. The permitted baseline originated from case law primarily on land use and subdivision consents. The Act as amended in 2005 has formalised this concept as an option to be considered. Note that it is not mandatory to consider permitted baseline. In practice there are few situations when the baseline is directly applicable to Regional Council consents, partially due to the structure of our plans, however it is likely that situations will arise when it should be considered, or justification for not considering it should be noted.

The consideration for notification/non-notification of controlled and restricted discretionary activities is slightly different as identified in section 9.2 below.

Note you should consider the overall combined effects of the proposal on the broader environment. It is possible to have more than minor effects on one neighbour but still have an overall minor effect in terms of the wider environment. It appears that intention of the Act as amended in 2003 is for limited notification to apply to local effects and public notification for more than minor effects per se.

9.2 Statutory requirements

Sections 93 to 95 of the Act set out the requirements for notification of applications. The presumption is that an application will be publicly notified

unless the criteria for limited notification (service of all affected persons only) or non-notification are met.

Public notification is required when:

- The activity is *discretionary*, *restricted discretionary* or *non-complying* and the effects on the environment are **more than minor**; or
- The applicant requests notification (section 94C(1)) or;
- Special circumstances exist that the consent authority considers warrant public notification (section 94C(2)). *Special circumstances have been defined as circumstances that are unusual or exceptional, but may be less than extraordinary or unique. Special circumstances must be more than an indication that people want to make submissions or that a large development is proposed.*
- Notification of a restricted discretionary activity is not required, even if the effects are more than minor, if the relevant Rule in the Plan allows the application to be considered without notification and approval of affected persons. Special circumstances should be used if you consider notification is necessary in this instance.

Limited notification (service of notice on all adversely affected persons) is necessary when:

- The activity is *discretionary*, *restricted discretionary* or *non-complying* and the effects on environment will be **minor** and written approvals have not been obtained for all affected persons, unless a note in a rule in the plan does not require an application to be notified; or
- The activity is *controlled* and written approvals have not been obtained for all affected persons.

Non-notification is allowed when:

- The activity is *discretionary*, *restricted discretionary* or *non-complying* and the effects on environment will be **minor and** there are no affected persons, or if there are, they have all given their written approval; or
- The activity is *controlled and* there are no affected persons, or if there are, they have all given their written approval; or
- It is specified in the relevant rule that an application may be considered without notification and/or service of notice.

9.3 Who makes the notification decision?

The decision about whether an application should be processed as publicly notified, limited notification or non-notified is delegated to resource advisors. Hence, both the decision and accountability for that decision are yours. Resource advisors are not automatically delegated. Once you have reached a level of competence you will receive your delegations. Your team leader will advise you when it happens.

If your notification decision is borderline or you are unsure in any way – get your notification decision peer reviewed by a senior resource advisor or a team leader.

9.4 Documenting your notification decision

Your documentation should be consistent with the scope and nature of the notification decision. That means that if the decision is very straightforward you don't need to write much. In general, you will use the red form (SF5A) but, if the decision is difficult, you may need to do a mini report. Use your judgement about what documentation is necessary.

Make sure you state the basis for your decision to non-notify or to use limited notification in your officer's report/decision.

9.5 Are adverse effects minor or more than minor?

9.5.1 Guidelines

As a starting point identify the range of potential adverse effects of the proposal, which can include:

- downstream effects;
- receiving environment effects;
- construction effects;
- Maori cultural effects;
- ecological effects;
- wildlife effects;
- public access effects;
- public recreation effects;
- impact on the physical environment;
- atmospheric effects;
- health effects;
- compatibility with surroundings; and
- historical and/or archaeological site effects.

Then take into account:

- the cumulative nature of any effect over time or in combination with other effects;
- the probability of occurrence;
- the scale and consequences of the effect (high potential impact?);

- the duration of any effect;
- any temporary effect (e.g., adverse effects that may be created through carrying out construction work);
- the frequency or timing of any effect;
- whether the effect is a section 6 or 7 matter;
- the area affected (are the effects limited to within the property boundary of the applicant?);
- is there an effect on neighbours or the wider environment?;
- the sensitivity of surrounding uses to that effect;
- reverse sensitivity issues;
- whether the effect is to be mitigated or avoided by a condition contained in the application or offered by the applicant in the application, which the applicant has agreed to.
- whether the potential effects are so significant and dependent upon compliance with conditions – that such effects cannot be considered as *minor*.
- You may also take into account the permitted baseline (see section 9.5.3, below)

Do not take into account:

- Positive effects from the proposal:
- Do not consider the effects of one activity in isolation, where other applications are part of a package
- Effects on persons who have provided their written approval

In determining whether the effects of an activity are likely to be minor you may need to consult with others in GWRC or with outside experts.

9.5.2 Restricted discretionary activities

Section 94A(b) of the Act states that we must disregard any adverse effect of an activity on the environment that does not relate to the matters specified in a plan over which we have restricted our discretion. That is, effects outside the consent authority's discretion are irrelevant and therefore must not be considered.

9.5.3 Permitted baseline considerations

Permitted baseline is the level of effects on the environment already allowed by permitted activities in an operative plan, i.e., what is allowed 'as of right'. Section 94A(a) of the Act gives the consent authority the discretion to disregard any adverse effect of an activity on the environment where such effects are already permitted in a plan. (Before the Act was amended in 2003 case law indicated that the permitted baseline was a mandatory consideration.)

In general, we need only consider permitted baseline issues when deciding whether environmental effects of the proposed activity are minor or more than minor in the following situations:

- where the consent application is for an activity whose effects marginally to moderately exceeds the numeric standards or limits or effects permitted by conditions attached to a comparable permitted activity in the plan; and/or
- Where the applicant refers to permitted baseline or similar in their application as justification for avoiding public notification of their application.

If you do exercise the discretion to consider permitted baseline, when determining whether effects of a proposed activity are going to be minor or more than minor, you need only consider the scale effects over and above the permitted baseline. Note applications should be assessed against permitted activity scenarios that are similar in nature, i.e., comparing ‘like with like’ effects.

For further information see standard guideline G22.

Where the permitted baseline has been considered as a factor in reaching your decision on whether effects are minor or more than minor for the purposes of the notification decision then you must record this in your officer’s report.

9.6 Are there adversely affected persons?

9.6.1 Statutory considerations

When forming an opinion as to who may be adversely affected Section 94B of the Act tells us that:

- A person **may** be treated as not being adversely affected if the plan permits an activity with those effects (section 94B(3)(a) permitted baseline – see 9.5.3); and
- A person **must** not be treated as adversely affected if the adverse effects on that person do not relate to matters over which the consent authority has reserved its control or restricted its discretion in relation to controlled and restricted discretionary activities (section 94B(3)(b)).
- A person **must** not be treated as adversely affected if it would be unreasonable in the circumstances to seek the written approval of that person (section 94B(3)(c)). *Note this provision is not to be used to ignore people who “unreasonably” withhold their approval. It applies where otherwise affected persons are not easily contactable or available (we need to document every effort that we have made to contact such persons).*

9.6.2 Identifying adversely affected persons

You must consider whether there is any adverse effect including any minor effect, which may affect any person. You can only disregard any *de minimus* effects (i.e., trivial – even less than minor) and those effects that are only a remote possibility.

The following is a list of potentially *adversely affected* persons and parties who *may need* to be consulted depending on the nature and scale of the resource consent application:

- owners² and occupiers of the land;
- owners and occupiers of adjacent and/or downstream land;
- iwi (particularly for discharge permits, water takes and activities in the coastal marine area);
- tangata whenua (where there is a statutory acknowledgement in Schedule 11 of the Act);
- downstream resource users;
- any Minister of the Crown with statutory responsibilities for an area or site that could be adversely affected;
- the relevant district council;
- the body that administers a watercourse (drainage or flood protection authorities);
- those persons or organisations whose use or enjoyment of an area could be adversely affected;
- adjoining owners and occupiers with sensitive activities (reverse sensitivity effects);
- any other person who the consent authority considers is affected in a manner different from the public generally.

You should use this list as guidance only. You may consider that someone who is not included in the list is an adversely affected party. Be careful of relying on information (especially drawings and plans) provided by the applicant to determine who is an affected party. It is often in the applicant's best interest to make it look like there are only a few affected parties.

Note: the resource consent process is public and participatory and care must be exercised before removing those participatory rights.

9.6.3 Pre-application consultation with affected and interested persons

Schedule 4 (Assessment of Effects on the Environment) of the Act states that an assessment of effects on the environment should include: *an identification of the persons affected by the proposal, the consultation undertaken, if any, and any response to the views of any person consulted.*

A good way of doing this is to ask the applicant to consult with a wide range of parties before you determine whether they are adversely affected. You will usually find that the applicant will tell you who they think are adversely affected parties and it is often useful to consult with a range of potentially adversely affected parties to see if they actually are adversely affected in terms of the Act. However, the 2005 amendments to the RMA have made it explicit that there is no duty or requirement for an applicant to undertake any consultation.

² Includes any person who is a party to a written sale and purchase agreement for the land (either conditional or unconditional) or similar agreement to take a lease of the land.

The information you obtain will allow you to make a better assessment as to whether the person is an adversely affected party (and their written approval is required) or if they are simply an interested party (and there is no need to obtain their approval).

A word of warning: Be careful not to unrealistically raise expectations of potentially adversely affected parties. If asked, you should make it very clear that the applicant is simply consulting with the potentially affected party and that the proposal may not need their sign off.

9.6.4 Obtaining written approvals

The applicant is responsible for obtaining the written approval of adversely affected persons not the consent authority.

Space has been provided on Application Form 1 for an applicant to obtain the written approvals. If another method is used to obtain written approval, it should be clear that the person giving approval is fully conversant with the nature of the activity and its effects and is agreeable to the activity proceeding. Written approvals must be unconditional. If an affected party wishes some modification to be made to the proposal before giving approval, this should be negotiated directly between the applicant and the affected party and the application modified accordingly. It should be clear from the written approval that the final application and any plans have been sighted by the person giving their written approval.

It is our responsibility to determine who we consider to be adversely affected and determine whether all such persons have given their approvals. We need to ensure that the approvals given are for the particular proposal being considered.

Checklist for written approval:

- Signature of affected party
- Have all relevant plans and perhaps assessment of effects been signed and dated?
- Are they the same plans submitted with the application?
- Are the approvals from the correct people (i.e., registered landowner(s), all landowners or occupiers if there is more than one registered on the certificate of title)?
- Have all trustees signed (or have authority to sign on the others' behalf)?
- Are the approvals unconditional? We are not required to ensure the demands or 'conditions' of an affected person are satisfied. This is the responsibility of the applicant. The proposal should have been amended by the applicant to reflect any agreed changes.

9.6.5 If approval is withheld

From time to time an applicant may suggest that a potentially adversely affected party is withholding their approval unreasonably (in their opinion).

Examples include feuding neighbours and trade competitors³ making life difficult for one another or people who see the opportunity to make money from the applicant. In those cases you should contact the *potentially adversely affected* party independently and determine their concerns (see above).

Often the difficulty is a lack of trust of the applicant or a misunderstanding between the applicant and other party and you may be able to negotiate a resolution to the problem. As part of our customer service to both applicants and potentially affected parties we should try to reach a solution which is acceptable to all. If you can not reach a solution and the person is an adversely affected party then the application can not be considered as non-notified. You will also need to discuss the matter with the applicant. In most cases they will be happy for you to assist. But on other occasions it may be better for everyone to have a notified consent application. Nevertheless, if you do come across a situation where a party is abusing the need for written approvals it would be advisable to discuss it with your team leader. The information can then be logged so that we can monitor the problem.

9.6.6 Stopping the statutory clock so the applicant can obtain written approvals

For applications lodged after 1 August 2003, there is a specific provision in the Act (section 88B(b)) for the statutory clock to be stopped while written approvals are being sought by the applicant, even if they are not obtained. Further amendments to the Act in August 2005 reinforce our ability to stop the clock while written approvals are being sought by the applicant.

Use Standard Letter L30 for this purpose.

9.6.7 Withdrawal of written approval

Where an application is processed on a limited notification basis and notice has been served on someone who has already provided their written approval, they may now lodge a submission on the application. If a submission opposing the application is received then the submitter must withdraw their previously given written approval in writing before the date of the Hearing (if one is being held) so that the consent authority can consider the effects of activity on that person as per section 104(4) of the Act.

9.7 Challenges to notification decision

9.7.1 High Court judicial review

Our decision to non-notify a consent application may be challenged by way of a judicial review in the High Court. The Court will consider whether the consent authority followed proper procedures and correctly applied the law, whether the decision was reasonable, and whether it took into account all relevant considerations and did not consider any irrelevant matters.

³ We do not take into account trade competition effects when deciding whether someone is adversely affected.

The Court has noted that the consent authority has broad discretion to determine whether a consent application is notified and except in circumstances which might amount to a decision being made unreasonably or irrationally, the Court would be unlikely to interfere. In essence the Court has said that it does not want to substitute its judgement for your judgement. So provided you have a rationale for your decision the Court will not interfere. However, the Court has also stated that it is important to document your reasons for non-notification.

The 2005 amendments to the RMA have flagged, that in the future, decision on notification may be challengeable in the Environment Court, rather than in the High Court. However, the implementation of this component of the amendments has been deferred until such time that the Environment Court has the capacity to absorb such a function. This may be some time away.

9.7.2 Section 104(3)(d) of the Act

Section 104(3)(d) of the Act states that a consent authority cannot grant resource consent if the application should have been publicly notified and was not. It appears that a submitter on a limited notification is entitled to argue at the hearing and/or on appeal that the application should have been publicly notified. If GWRC or Court agrees it appears they would have no choice but to decline consent.

Non-notified resource consent processing (for complete applications)

Step	Timeframes	Std Docs	Refer to manual
Acknowledge application	BP within 5 wd of lodgement	L1	10.1
Provide cost estimate for major applications that are likely to exceed the application fee		L11	15.4
Are further consents required?	BP within 5 wd of lodgement	L26	10.2
Are any statutory referrals required for activities in the CMA or land with heritage values?	BP asap as clock cannot be stopped		10.4
Do you need further written approvals?	BP within 5 wd of lodgement	L30	10.3
Check for iwi concerns	Iwi response 2-5 wd		10.7
Is further information required from applicant?	BP request within 5 wd of lodgement	L5	10.5
Is technical advice required from another GWRC Department to better understand the effects of the proposal?	Cannot stop clock while advice being sought unless deemed to be affected party requiring approval. Alternatively Stat timeframes could be extended	F8; F7	10.8
Write your officer's report		L42	10.14.1
Prepare consent certificate		L7	10.18
Send notice of decision letter to applicant	20 wd from lodgement	L2; L3; L4	10.17
When does the consent start?			10.19
QA of consent documents			10.20

Limited notification resource consent processing (for complete applications)

Step	Timeframes	Std Docs	Refer to
Acknowledge application	BP within 5 wd of lodgement	L71	10.1
Is further information required from applicant?	BP no more than 5 wd Stat – info to be available 10 wd before hearing	L47	10.5
Are further consents required?	BP within 5 wd of lodgement	L26	10.2
Provide cost estimate	BP within 5 wd of lodgement	L11	15.4
Are any statutory referrals required for activities in the CMA or land with heritage values?	BP asap as stat clock cannot be stopped		10.4
Is technical advice required from another GWRC department to better understand the effects of the proposal	Can extend time frames under s37 or put on hold if approval needed as an affected party	F8; F7	10.8
Do you need to commission an external report on the application?	Can be done at any reasonable time. Stat clock can be stopped. Report must be available 10 wd before hearing		10.6
Serving notice on affected parties	Stat within 10 wd of lodgement	L72	10.9
Submissions process	Stat – subs close 20 th wd after notice served	L9; L31; F11	10.11
Revise estimate of costs if necessary		L11a	15.4
Pre-hearing meeting	BP within 10 wd of close of submissions	L27; L31	10.12
Extending time frames		L34; L46: L62: L63	Chapter 6

Public notification resource consent processing (for complete applications)

Step	Timeframes	Std Docs	Refer to
Acknowledge application	BP within 5 wd of lodgement	L20	10.1
Is further information required from applicant?	BP within 5 wd of lodgement Stat info must be available 10 wd before hearing	L47	10.5
Are further consents required?	BP within 5 wd of lodgement	L26	10.2
Joint authority applications		F28	Chapter 12
Provide cost estimate	BP within 5 wd of lodgement	L11	15.4
Are any statutory referrals required for activities in the CMA or land with heritage values?	BP asap as clock cannot be stopped		10.4
Is technical advice required from another GWRC department to better understand the effects of the proposal?	Can extend timeframes under s37.	F8; F7	10.7
Do you need to commission an external report on the application?	Can be done at any reasonable time. Stat clock can be stopped. Report must be available 10 wd before hearing		10.6
Public notice (advertisement)	Stat - Within 10 wd of lodgement	L8	10.10.1
Advise Word Processor Operator of notification information to go on GW website	Same date as public notice		
Put sign up at site	Same date as public notice		10.10.2
Individual notification of affected or interested parties	Same date as public notice	L24	10.10.3
Notify GWRC Policy Dept	Same time as public notice	L23	10.10.3
Submissions process	Stat – submissions close 20 th wd after public notification	L9, F11, L31	10.11
Revise cost estimate if necessary		11a	15.4

Pre-hearing meeting	BP within 10 wd of close of submissions	L27; L31	10.12
Extending time frames		L34, L46, L62, L63	Chapter 6
Decision with no hearing – negotiated outcome	Stat – decision released 20 wd after close of submissions	L32; L54	10.13
Hearing arrangements- setting a date	Stat - 25 wd after close submissions	F12	10.15.2
Appointment of hearings committee		L13	10.17
Appointment of commissioners (if applicable and guidelines for their use)		L10; G5	10.17
Appointment of joint hearing committee		L19	Chapter 12
Notice of hearing to applicant and submitters	Stat - 10 wd before hearing	L17	10.15.3
Advise Word Processor Operator of hearing date, time and venue information to go on GW website			
Notice of hearing to council secretariat	BP – 10 wd before hearing	L16	10.15.5
Confirm hearing arrangements to councillors	BP - 10 wd before hearing	L15	10.15.5
Writing your officer's report for hearings committee	Draft to QA 12 days before hearing Draft to Dept. Manager 9 wd before hearing	L43	10.14.3
Distribution of officer's report to applicant and submitters	Stat Final report & cover letter 5 wd before hearing. Mail out 7 wd before hearing. (unless evidence is pre-circulated as per s.41B, then distribute 15 wd before hearing)	L25	10.15.6
Distribution of officer's report and other information to hearings committee or commissioners	6 wd before hearing	L12	10.15.7
Closing the hearing	BP within 5 wd of the last public hearing day		10.15.11
Drafting the decision			10.16.3


Provide short summary of decision (1 para max) to Word Processor Operator for GW website			
Distribution of decision and covering letter	Stat notified 15 wd after close of hearing	L22; L21; L33	10.16 10.17
Prepare consent certificate	Send out 15 wd after decision notified	L7	10.18
When does the consent start?	15 wd after decision notified if there are no appeals or objections		10.19
QA of consent documents			10.20

Chapter 10

Consent processing



10.1 Acknowledge application

Once an application has been determined as ‘complete’ in terms of section 88 of the Act (see Chapter 8) it must be formally acknowledged.

- ☆ Best practice – applications should be acknowledged within 5 working days of lodgement.
-  Use standard letters L1 (non-notified), L71 (limited notification) or L20 (publicly notified).

10.2 Are further consents required?

Where additional consents are required for a proposed activity and the applicant has not applied for these, the application may be put on hold using section 91 of the Act pending the additional consent applications.



-  The applicant must be advised immediately in writing that consent processing has been put on hold and what further consents are required. Use standard letter L26.
-  Once the required consent applications are received the statutory clock is reset to zero and processing restarts.

Where the consents are required by another authority, the processing officer should contact the relevant authority to ensure the processing is done in a co-ordinated manner. For major activities there will need to be procedures put in place for joint processing of the applications (see Chapter 12)

- ☆ Best practice – take no more than 5 working days from lodgement to determine whether additional consents are required.

10.3 Are written approvals required?

An application need not be publicly notified where all adversely affected parties have provided their written approval. It is our responsibility to determine who we consider to be adversely affected. However, it is the applicant’s responsibility to obtain the adversely affected person’s written approval(s). Refer to 9.6 for further information.

- ☆ Best practice – written approvals should be requested within 5 working days of lodgement.
-  Use standard letter L30.
-  The application can be stopped under section 88C(10) while written approvals are being sought by the applicant, even if they are not obtained.

10.4 Statutory referrals of applications

10.4.1 Activities in the coastal marine area

All applications for restricted coastal activities in the CMA must be copied and sent to the Regional Conservator of the Wellington Conservancy of the Department of Conservation (acting on behalf of the Minister of Conservation) by the processing officer. (Refer to section 117 of the Act).

Any application for a coastal permit for a reclamation, the construction of any structure, or the undertaking of any harbour works or the removal of any stone, shingle, sand, boulders, silt, mud, shell, or other material within the meaning of the Harbours Act 1950 must be sent to the Maritime Safety Authority (MSA) (acting on behalf of the Minister of Transport). (Refer to section 395 of the Act).

The MSA has 15 working days after receiving their copy in which to respond on any navigational matters relevant to the application, including any conditions which should be included. A copy of this report must be sent to the applicant by the processing officer. The report must also be referred to in the officer's report on the application and taken into account in consideration

It is important to send the application to MSA as quickly as possible to ensure their response will arrive within 20 working days. The statutory clock is ticking while MSA assess the application. We do not send applications for replacement consents for existing structures, e.g., boatsheds to MSA.

An application for a coastal permit for a Marine Farm must be copied and sent to the Minister of Fisheries (MoF) (Refer to section 396 of the Act).

The MoF has 15 working days after receiving their copy in which to respond on any matters relevant to the application, including any conditions which should be included and comments on any lease or licence that is in force for the part of the coastal marine area in respect of which the application is made.

The processing officer must send a copy of the report from MoF to the applicant. The report must also be referred to in the officer's report on the application and taken into account in consideration

10.4.2 Consents involving land with heritage value

An application must be served on the New Zealand Historic Places Trust if the application relates to land that is:

- the subject of a heritage order; or
- a requirement for a heritage order; or
- is otherwise identified in the plan as having heritage value; or
- affects any historic place, historic area, wahi tapu, or wahi tapu are registered under the Historic Places Act 1993.

10.4.3 Consents involving piping or reclaiming streams

Although not a statutory requirement, it is good practice to forward copies of applications involving the above to the Department of Conservation (DOC). A Memorandum of Understanding (MOU) has been developed with the Department of Conservation which provides further detail on which applications DOC are interested in seeing. This MOU should be referred to when determining what material should be sent through to DOC for consideration, and will also assist in determining whether or not DOC are an interested or affected party to any application.

10.4.4 Swing moorings

Applications for swing mooring permits are processed by Environmental Regulation. Before the permit is granted we must obtain approval from the Harbours Department for the location of the swing mooring (email confirmation from Harbour Ranger is sufficient) and the buoy number.

Once the swing mooring permit is issued, pass the entire file to Harbours Department. The Harbours Department is responsible for compliance monitoring and dealing with non-compliance. Environmental Regulation is responsible for administering annual charges. Responsibilities for transferring permits, surrendering permits and updating SAP and CoCo with changes of contact details are described in Appendix A.

10.5 Is further information required from applicant?

10.5.1 Statutory framework

Under section 92 of the Act we may request further information on an application to better understand the nature of an activity, the effect it will have on the environment or the ways in which adverse effects may be mitigated.

Under section 92A(1)(c) of the Act (as amended in 2005), applicants may refuse in writing to provide further information and may request that we proceed with the application on the basis of the information already provided.

Additionally, under section 357A(1)(b) of the Act the applicant may formally object to GWRC in the first instance to any request for further information and may then appeal GWRC's decision on the objection to the Environment Court (see Chapter 19).

See Figure – for outline of the process of further information requests.

10.5.2 Documentation



All requests for further information must be in writing by an officer with delegated authority. Use standard letter L5 for a non-notified application and L47 where the application is to be publicly notified or notice served on affected parties.

- ☆ Best practice – is to take no more than five working days to request further information after lodgement.

Try to keep the number of further information requests to a minimum. Ideally the number of further information requests should not exceed two, i.e., when you receive a complete application and then where there are any further matters raised in submissions.

10.5.3 Timeframes

- ① Under the Act, as amended in August 2005, applicants have 15 working days to respond to our request for further information. There are three possible responses:

- (a) The applicant provides the requested information within 15 working days; or
- (b) The applicant agrees in writing to provide the requested information, but requires more time than the statutory 15 working days in which to provide it. We then write to the applicant giving them a reasonable deadline for providing the information; or
- (c) The applicant refuses in writing to provide the requested information.

We calculate statutory timeframes as follows:

Stop clock: Date of our written request for further information

Start clock: The date the information is received if within the 15 working days following our request for further information

15 working days after our written request for further information (if no response); or

Date we set for providing information, where applicant has agreed in writing to provide further information; or

Date applicant refuses in writing to provide information when within 15 working days of our written request for further information.

Where a hearing is to be held any further information requested must be available for inspection at our office no later than 10 working days before the hearing.

10.5.4 Refusal or failure to provide further information

If we consider that we have insufficient information to assess and determine an application, we may decline an application where the applicant has failed to respond to our request for further information within 15 working days of our request; or has failed to meet our deadline for supplying further information.

It is also possible that at this stage the application could be notified as opposed to simply being declined. You should talk with your team leader about this option at the time.

The applicant has the right to appeal our decision to decline their application to the Environment Court. Section 92A of the Act requires the Environment Court to first determine whether we had sufficient information to decide the application. If the Court considers that our decision was justified, then it must decline the application. If the Court finds that we had sufficient information to decide the application, then the Court will consider the entire application and make a decision whether to grant or decline consent.

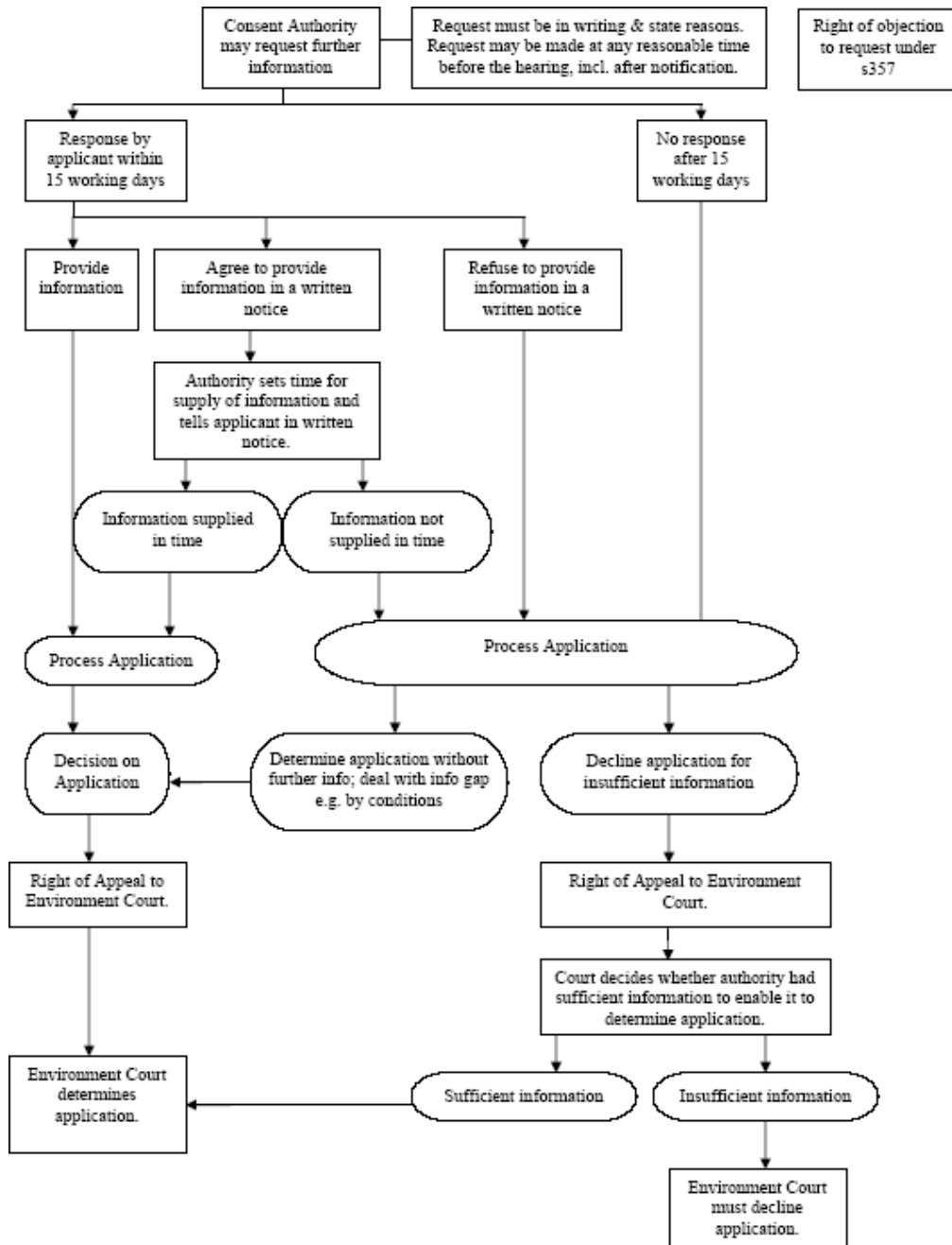


Figure 2: Further information requests s 92 and 92A

10.6 Commissioning a report on the application

10.6.1 Statutory framework

For resource consent applications that may have a significant adverse environmental effect, further information may be sought by commissioning a report on any matters raised in relation to the application, including a review of any information provided in an application. The request can be made at any time before an application is determined. Section 92(2) of the Act sets out the legal framework for this.

The applicant must be notified before the report is commissioned and must agree to the report being commissioned. The statutory clock must be stopped under section 88(C) while the report is being prepared (refer to section 10.6.3 of this manual)

10.6.2 Documentation

The applicant must also be advised in writing of any decision to use external consultants prior to the consultants being engaged. The letter to the applicant must refer to section 92(2) of the Act and inform the applicant that they must advise us within 15 working days whether they agree to the commissioning of the report.

Where it is proposed to use consultants or other GWRC Departments to report on applications, the processing officer must prepare a clearly defined brief setting out the extent of the reporting requirements and timing. As noted above, if you need to use outside consultants then you must discuss the matter with the applicant first. If the applicant agrees that an external consultant is necessary they should also have some input into the scope of the consultant's work (but not who is chosen to do the job). You must provide the consultant with a clear scope of work required, including timelines for updates on progress, quality assurance reviewing, and a final deadline. The consultant must then provide a project brief to you outlining the nature and extent of their review, the manner of reporting, and a realistic estimate of costs. It is also **your** responsibility to ensure that the consultant's work is on time, of suitable quality and within budget.

If an applicant has reservations about the use of an outside consultant or objects to their use then you should refer the matter to your Departmental Manager.

The decision to seek additional information is delegated to resource advisor level. However, you must discuss the matter with the manager or team leader and with the applicant.

10.6.3 Timeframes

Under the Act, as amended in August 2005, applicants have 15 working days to respond to our notice that we wish to commission a report on their application. There are two possible scenarios:

- (a) The applicant does not respond to our notification within 15 working days; or
- (b) The applicant refuses in writing to agree to the commissioning of the report.

We calculate statutory timeframes as follows:

- Stop clock: Date of our notice of our wish to commission a report.
- Start clock: 15 working days after our notice; or date we receive applicant's refusal to the commissioning of the report,
- Date when the report is provided in the situation where the applicant has agreed to the commissioning of the report.

Where a hearing is to be held, the commissioned report must be available for inspection 10 working days before the hearing.

10.6.4 Failure to respond or refusal to agree to commissioning of report

If we consider that we have insufficient information to assess and determine an application, we may decline an application where the applicant has not responded to our notice of our wish to commission a report within 15 working days of our request or has refused to agree to the commissioning of a report.

The applicant has the right to appeal our decision to decline their application to the Environment Court. In addition, the applicant has the right under section 357A(1)(c) to object to our request to commission a report on their application. GWRC's decision on the objection may then be appealed to the Environment Court.

10.7 Iwi advice - Non-notified consent applications

Best practice - All non-notified applications are forwarded to iwi for their comment in accordance with GWRC's agreement on tangata whenua consultation. Local iwi groups are paid an annual fee and in return provide comments on non-notified applications. The only exception is where iwi are an adversely affected party and their written approval is required before and application can be processed as non-notified (see 9.6).

In Wellington this task is undertaken by the administration assistant and in the Wairarapa by consents officers.

When an application is received the administration assistant sends a standard fax which specifies a time limit for the iwi response. Generally, iwi have between two and five working days to comment on the application.

If the iwi identify any effects which have not been included in the application then it is up to you to decide how to proceed. You may:

- simply note the iwi concerns in your report;

- include conditions to address the issues raised by iwi;
- discuss the matter further with either iwi or the applicant;
- bring the issues to the attention of the applicant and encouraged them to discuss the issues with the relevant iwi;
- any other lawful action that may be appropriate

Under no circumstances are you to use iwi as *de facto* consent authorities. It is your responsibility to decide how to react to iwi comments and if that involves not taking their advice then so be it.

10.8 Seeking advice from other GWRC Departments

If expertise within GWRC is available, the processing officer should discuss the application with a team leader and the appropriate staff member before formally seeking advice. This may be at the stage of assessing the adequacy of information supplied with an application or when drafting consent conditions. You should also keep the applicant informed.

The *Resource Consent Application Response Form* (F8) is used to seek advice or assistance from within GWRC. In some cases a memorandum may also be required. The completed form should be passed to the Divisional Accountant for charging.

Note you cannot stop the statutory clock while the advice is being sought unless you deem the GWRC to be an affected party whose written approval is required.

10.8.1 Consents involving watercourses

Copies of land use consent applications and applications for any consents involving watercourses that GWRC has administrative control over may be forwarded to the Flood Protection Group (Strategy and Assets), in Wellington, and the Operations Department, in the Wairarapa, for assessment and suggested conditions. (See standard guidelines G14 for a list of water courses).

The *Resource Consent Internal Review Form* (F7) is used to seek comments from Flood Protection Group (Strategy and Assets) where there are issues relating to waterway management strategies.

There is a subtle, but very important, difference between asking for expert comment (e.g. is this culvert big enough) and sending an application to the authority who administers the water course as a potentially affected party. In the case of flood protection you will be charged a fee for the expert advice but should not be charged when the comments relate to how the authority wants the watercourse to be managed. You are not to use watercourse administrators as *de facto* consent authorities - it is your responsibility to reach a conclusion about whether the consent can be granted and what conditions may be appropriate.

10.8.2 Coastal permits involving navigational safety

Copies of coastal permit applications which concern navigational safety issues, including moorings, must also be sent to Harbours Department, GWRC, for technical comment.

10.8.3 Wairarapa Consents

In the Wairarapa office, technical advice on application may be sought from:

- Soil Conservation, for land clearing and soil disturbance;
- Hydrology, for surface and groundwater takes;
- Operations/Rivers, for work in streams and rivers;
- Forestry, for logging; and
- Operations, for gravel extraction.

10.9 Serving notice on adversely affected parties (Limited notification applications)

Notice must be served on all adversely affected parties, regardless of whether they have previously provided their written approval for the proposal. This means that if 5 persons are considered adversely affected, but only 4 have provided their written approval, all 5 persons would still be served with a notice of the application.



Use standard letter L72 (enclose a copy of the application if possible, otherwise a summary of the application will be needed)



As with notified consents you have 10 working days from lodgement to serve notice on affected persons. Likewise submitters have 20 working days from the date of service of the notice to make a submission.

10.10 Public notification process

10.10.1 Public notice (advertisement)

Section 2 of the Act defines “Public Notice” as one published in a newspaper circulating in the entire area likely to be affected by the proposal. In Wellington the advertisement is usually placed in the public notices section of the Saturday edition of the *Dominion Post*. Notices will only be placed in local papers at the request of the applicant. Wairarapa applications are notified in the *Wairarapa Times-Age* or the *Wairarapa News* depending on the location of the proposed activity. The processing officer determines which papers the notice will appear in.



There is a standard format (L8) for advertisement that must be followed. If you do not to comply with the standard form then it is possible that the application may have to be completely re notified.



Notice must be published in the newspaper within 10 working days of lodgement.

In Wellington, the advertisement must be typed by the processing officer and emailed to TMP Worldwide (who are responsible for placing the advertisement) by 2.00 pm on the Tuesday before the Saturday edition of the *Dominion Post*. (See Communications pages on the Greater Wellington intranet for TMP contact details and other newspaper deadlines)

Don't forget to fill out a purchase order so that the cost can be billed to the correct customer.

At this point you should also offer a copy of the draft advertisement to the applicant (or their solicitor) so that they can be happy with it. Generally if an applicant wishes to make changes to an advertisement then that is fine (although we will not cover the cost of readvertising should the applicant's alterations mean that the advertisement is incorrect).

TMP Worldwide will return the advertisement for proofing. Please be very careful when proofing the advertisement - remember an incorrect advertisement will be fatal to the application. If we prepare an incorrect advertisement then the GWRC will have to cover the cost of readvertising.

The processing officer forwards notification information to the WP operator who will put the information on the GWRC website.

When an application is notified, details of the application and processing officer are written on the Notified Application Board and the file is available for public inspection during the notification period. In the Wairarapa, the advertisement is typed up and arranged by support services.

- ☆ Best practice - If more than one newspaper used the date of notification will be the date of the latest newspaper advertisement.

10.10.2 Sign

Unless considered impractical or unreasonable to do so, a public notice must be placed on site and be visible from at least five metres.

The site notice (sign) and public notice (advertisement) must contain the same information. The text of the notice to go on the sign is prepared in A4, landscape, then enlarged to A3. The text is then trimmed and stuck on a plastic pre-printed sign with converseal.

Ensure that the location (as it is commonly known) of the site is accurately described. Include an NZMS 260 map reference, and an address if available.

The sign should be erected on the site as close as possible to the date the notice appears in the newspaper. Take a photo of the sign once erected and place on the consent file.

10.10.3 Individual notification of affected or interested parties

Potentially affected parties

The applicant is required to list the names of adjacent landowners and other parties who may be affected in the application. The processing officer should ensure that the list is complete. You can use GIS to help you work out the potentially affected party list.

The following persons/agencies *may* be notified as considered appropriate:

- Owners/occupiers of the land
- Any person who is likely to be directly affected by the application, including adjacent owners and occupiers of land, where appropriate
- Territorial authority
- Department of Conservation
- Wellington Conservation Board
- Ministry of Agriculture and Forestry
- Ministry of Fisheries
- Ministry for the Environment
- Ministry of Transport
- Public Health Service
- New Zealand Historic Places Trust
- Wellington Fish and Game Council
- Iwi authorities:
 - Te Runanga o Raukawa (around the Otaki River)
 - Te Ati Awa Ki Whakarongotai (Waikanae/Paraparaumu)
 - Ngati Toa (Porirua)
 - Te Ati Awa (Wellington City/Hutt Valley)
 - Wellington Tenths Trust (Wellington City/Hutt Valley)
 - Ngati Kahungunu (Wairarapa)
 - Rangitane o Wairarapa (Wairarapa)
- Royal Forest and Bird Protection Society
- The local residents association
- Local and national environmental groups as appropriate



Use standard letter L24 for individual notifications.

Environmental Policy notification

Environmental Policy Department needs to be individually notified of any publicly notified consent application so that any GWRC submission can be made.



Use standard letter L23 for Environmental Policy notifications.

10.11 Submissions process

10.11.1 Submitters requirements

Under section 96 of the Act, the following persons may make submissions to GWRC:

- Any person where the application is publicly notified under sections 93 or 94C
- Only persons served with the notice of the application under section 94(1)

Submissions must comply with the requirements of section 96 of the Act and be in the prescribed form. Submissions may support, oppose the application or be neutral. Standard submission forms are available (F11). Submitters should be made aware of their legal obligation to serve a copy of the submission on the applicant as soon as reasonably practicable after serving a copy on GWRC. Often submitters fail to serve copies of their submissions on the applicant so you should keep in contact with the applicant to ensure that you both have all the relevant submissions.

10.11.2 After submissions close

Under section 97 of the Act the closing date for serving submission is the 20th working day after public notification or when notice was served. As soon as possible after the submission period closes, copies of all submissions and the submissions summary sheet are sent to the applicant using standard letter L9. You should also send a summary of submissions and your business card to the submitters using standard letter L31.

- ☆ Best practice - Where practical you should telephone submitters and advise them of what happens from here as well as likely time frames. Give them your team leader's name as a secondary contact.

As submissions are received they are entered into CoCo. To obtain a summary of submissions you can run an impromptu report from CoCo (See CoCo User Guide).

Depending on the number of submissions received you may need to revise your estimate of costs. If you have more submissions than originally assumed you may need to revise your estimate (use standard letter L11a). On your revised estimate you will need to also show actual costs to date. If you have not received any submissions revise your estimate, deleting costs associated with pre-hearing and hearing (see 15.4).

10.11.3 Late submissions

In general, where a submission arrives late it will not be accepted and hence the submitter will have no legal status. Nevertheless, the issues raised in the submission may legitimately be addressed in the officer's report. In essence, while the subject matter of a late submission may be addressed, the submitter will generally have no rights to appear at the hearing or to appeal the decision.

In special circumstances there is a power to accept late submissions. This authority rests with the resource advisor processing the consent. It will generally only be exercised when there is a problem in delivering the submission which was outside the control of the submitter (e.g. an inoperable fax machine). Late submissions are unlikely to be accepted if a submitter does not see the advertisement, has been away from the area, hasn't had time to prepare a submission or the like.

If you receive late submissions you should leave a file note stating whether they were accepted and your reasons for either accepting them or not accepting them.

The only other circumstance where late submissions may be accepted is when the applicant has given their approval for late submissions to be accepted. You need to make the applicant aware that accepting the submission gives the late submitter rights to appeal at a later stage.

A section 37(1)(b) waiver (for a failure to comply with the submission period) should be completed in order to formally accept the late submissions.

10.11.4 Submissions received where notice not served (limited notification)

Occasionally a person, who has not been identified as a potentially adversely affected person, makes a submission. You should acknowledge the person's submission in writing, explain why they are deemed not to be an adversely affected person and their submission is not valid. This should also be set out in your officer's report. This will ensure that decision maker(s) have all the available information at the time they make a decision.

10.11.5 Requests for further information

Matters raised in submissions may require further information from the applicant. All such requirements for additional information must be in writing and in accordance with section 92 of the Act (see 10.5)

10.11.6 If no submissions received

If no submissions are received on a notified or limited notification application, an officer's report to the Department Manager is prepared by the processing officer. The report should follow the general format described in 10.15 and include a recommendation to the Manager on the application, including conditions of consent if the recommendation is that the consent be granted. In this instance, the Department Manager has delegated authority to grant or decline the application.

10.12 Pre-hearing meeting

10.12.1 Statutory framework

Pre-hearing meetings are provided for under section 99 of the Act. They are not mandatory, but have been found to be very useful in practice. The purpose of a pre-hearing meeting is to clarify, mediate or facilitate a resolution on any

matter or issue arising from the application or a submission. Pre-hearing meetings provide an opportunity for applicants and submitters to meet together, understand each other's interest in the application and GWRC policies, and provide an opportunity for parties to work out points of disagreement or misunderstanding.

10.12.2 GWRC policy

In general you should encourage applicants to proceed with a pre-hearing meeting. However, there will be situations where a pre-hearing meeting is inappropriate such as where an applicant negotiates directly with submitters or where opposition to the project is particularly vigorous.

If an applicant negotiates directly with submitters make sure you know the outcome and check back with the submitters directly if you wish. It is not unknown for applicant's to take an optimistic view of what submitters are saying. Applicants or submitters may choose to have a legal representative at the meeting. This representation is purely optional but if possible you should discourage legal representation. We try to keep pre hearings informal.

10.12.3 Who should attend the meeting

Under section 99 of the Act (as amended in 2005) we can now require particular people to attend a pre-hearing meeting, but only for the purpose of clarifying or facilitating resolution of a matter or issues and if the applicant agrees.

If a person we require to attend a meeting refuses or fails to attend and does not provide a reasonable excuse, we may decline to process the person's application or to consider the person's submission. The applicant or submitter can object to our decision under section 357A.

10.12.4 Arranging the date and venue for the meeting

The processing officer will arrange a date for a pre-hearing meeting to be held.

- ☆ Best practice is to hold the hearing within 10 working days of the close of submissions.

The processing officer will find a suitable venue for the meeting as close as practicable to the site of the activity. Pre-hearing meetings may be either are held during normal business hours or in the evening (whichever is more convenient for the parties).

If further information is requested as a result of matters raised in submissions, the meeting is held after the information is received. The processing officer will try to notify the applicant and all submitters in writing at least 5 working days before the meeting.

10.12.5 Invitations to the meeting

☆ Best practice - It is helpful if you ring both the applicant and submitters to advise them personally of the meeting details. Phoning the participants will also enable you to obtain an idea of how many people will be attending the pre hearing.

 Use standard letter L31.

A member of a hearings committee or a commissioner empowered to make a decision on an application will not normally be involved in pre-hearing meetings unless:

- the parties attending the meeting agree to this; and
- the Manager, Environmental Regulation is satisfied that the person should be able to attend and participate. (Section 99(4) of the Act.)

10.12.6 Conduct of pre-hearing meeting

Agenda

The processing officer prepares an agenda for the meeting and any other relevant handout material. If any parties to the meeting request visual aids, the processing officer will arrange for these to be available. An agenda should be drafted and it should include (but not be limited to):

An introduction – GWRC officers introduce themselves and other participants also introduce themselves stating their position and who they represent

Purpose of the meeting -Outline that the meeting is an informal forum through which the applicant can outline their proposal to submitters. Submitters may wish to raise issues or seek clarification of issues. Ground rules for the meeting should be agreed. Such ground rules are likely to be things like as only one person speaking at a time, no personal abuse.

Issues -The processing officer and facilitator should be familiar with the issues raised in submissions. The main issues should be summarised and discussed at the meeting. It is often a good idea to have the issues on a white board or a large piece of paper so that additional comments or issues can be added

Overview and explanation of consent process or Where to from here

Facilitation at the meeting

A staff member other than the processing officer (usually the buddy) will facilitate the meeting. The processing officer will be present to answer questions. The processing officer will also record of those who attend the meeting and of any issues and outcomes, and will take minutes at the meeting in order to be able to prepare a report of the meeting for circulation prior to the hearing (refer to section 10.12.7 of the manual for more information).

During the meeting

The meeting is conducted in an informal manner with the applicant and each submitter being given an opportunity to raise any issues for clarification and/or negotiation. Ground rules should be agreed and if necessary those attending the meeting should be given an indication of the time constraints of the meeting and an indication of how long they should aim to speak. Participants should, however, have the opportunity to state their position and seek clarification of any issues without feeling pressured.

Closing the meeting

Usually at the conclusion of the pre hearing meeting there are three options:

Proceed to hearing - If it is evident that no agreement is going to be reached between the applicant and submitters, then you will need to proceed to a formal hearing. At the conclusion of the pre hearing you should advise all the parties present that it is likely that a hearing will be required and describe the process.

Agreement of issues - If the parties look like they are going to reach an agreement on the application, and the processing officer is comfortable with the agreements being reached, they can set appropriate conditions, there is no need for a formal hearing.

Request Further Information- It may be highlighted at the pre hearing that the applicant has not provided enough information to satisfy the submitters. If the processing officer agrees that further information needs to be requested, a letter requesting the information will be sent to the applicant. Once the further information is received it may be advisable to have another pre hearing meeting.

10.12.7 Report of pre-hearing meeting

Under section 99(5) of the Act (as amended in 2005) the meeting facilitator must prepare a report on the meeting which sets out the issues agreed to at the meeting and the issues which remain outstanding..The meeting report must not refer to anything that was presented or discussed at the meeting on a without prejudice basis. The report may also set out the nature of the evidence that parties are to call at the hearing, set out the order in which evidence is to be called, and set out a proposed timetable for the hearing,



Use standard letter L27.

A copy of the pre-hearing meeting report is circulated to all parties involved (i.e., all submitters and the applicant - not just those who attend the meeting) as soon as possible after the meeting and at must be received at least 5 working days before the hearing. The report and any agreements reached at the meeting form part of the officer's report to the hearing committee/commissioner(s) and is taken into account by them when making their decision.

At this stage you may also need to revise your estimate of costs depending on the outcome of the pre-hearing. You will need to show actual costs to date and

where changes in your estimate have occurred. Once revised send the estimate to the applicant using standard letter 11a (see 15.4).

10.13 Mediation

Under section 99A of the Act (as amended in 2005) we may now refer submitters and the applicant to mediation with their agreement. The mediation must be carried out by someone who has official delegation under section 34A of the Act. The person who conducts the mediation must report on the outcome of the mediation to us.

The statutory clock stops while mediation is being carried out in accordance with section 88C(12) of the Act.

10.14 Negotiated outcome – decision without hearing

10.14.1 Agreement on consent conditions and extending timeframes

In some instances the concerns of submitters can be discussed and resolved at a pre-hearing meeting. This can be done by reaching an agreement on a set of consent conditions which enable the activity to proceed while meeting the concerns of the objectors. If all parties to an application wish to reach agreement on an application, the processing officer arranges for the time limit for the commencement of the hearing and/or notifying the decision to be extended by the department manager.

Extending timeframes is necessary because under section 115, where a hearing is held not for a notified consent, the decision must be released not more than 20 working days after the close of submissions. If the extension of time more than doubles the maximum timeframe under the Act then you will need the agreement of the applicant. Use standard letters L46 and L63 or L62.

Note you must notify everyone who is directly affected by the extension of time limit.

10.14.2 Formulation of conditions

If all parties to the application agree, a set of draft conditions can be prepared which addresses the concerns of the submitters while still meeting the needs of the applicant and protecting the environment. The conditions must be QAed before they are circulated. The Department Manager must also be consulted and check the draft conditions before they are circulated.

10.14.3 Agreement on consent conditions and waiver of request to be heard

The draft conditions are circulated to the applicant and all submitters for their comments. There may need to be more than one round of negotiations on draft conditions if it is evident that modifications to the conditions will satisfy submitters and be acceptable to the applicant and GWRC.

If agreement is reached on the conditions the submitters can, if desired, either: withdraw their submission; or withdraw their right to be heard (if they had asked to be heard).

When a submission is withdrawn, the submitter loses legal status, and the situation is as if a submission had not be made, i.e., they also lose their right to appeal. Therefore, submitters should not be encouraged to withdraw their submission. When all submitters withdraw their wish to be heard, this removes the need for a formal hearing, but the submission remains valid. The submitter retains the right to appeal the decision.

Submitters' agreement to conditions and withdrawal of request to be heard/submission must be in writing. This can be done by sending a waiver form (L32) with a covering letter (L54) setting out the draft conditions and any relevant supporting information. If they are satisfied with the draft conditions, they are asked to fill in the form, sign it and return it to the GWRC. We have reply-paid envelopes which can be sent out with the letter. NB: Only submitters who requested to be heard need to withdraw their request. The applicant must also agree to the conditions and withdraw their right to be heard before the need for a hearing is negated.

The negotiation process can take longer than proceeding to a hearing, but can save significant costs for the applicant if a hearing is not required. The applicant should always be given the choice as to whether they wish to proceed with negotiations or have a hearing. The applicant may prefer a hearing if there are time constraints.

10.15 Matters to be considered in officer's report

10.15.1 Statutory basis for officer's report

The Manager, Environmental Regulation (under delegated authority) requires that processing officer's prepare a report for all consent applications under section 42A of the Act. In exceptional circumstances this requirement may be waived at the discretion of the Manager, Environmental Regulation.

10.15.2 Section 104 matters

Section 104 of the Act outlines the following matters we need to have regard to when considering an application:

Part II matters (sections 5, 6, 7, and 8)

This is the overarching purpose and principles of the Act. All applications must be considered subject to these sections.

Actual and potential effects on the environment of allowing the activity

The definition of 'effect' is in section 3 of the Act. The definition of 'effect' is wide-ranging. Case law indicates that this can extend to 'off-site future' effects. But it does not extend to 'precedent' effects (although these can be considered as an other relevant matter under 104(1)(c)).

Planning instruments

You must consider any relevant provisions of any national policy statements (there are currently none of these, but there are some soon to be developed by MfE); the New Zealand coastal policy statement; Regional Policy Statement for the Wellington Region; Regional Plans; and District Plans. You can also refer to any other relevant material such as GWRC policy made under other enactments, iwi management plans and policies, GWRC reports and Environment Court decisions.

Permitted baseline

Section 104(2) allows us to disregard the actual or potential adverse effects of allowing an activity that is already permitted by a plan. See our standard guidelines on the use of permitted baseline (G22).

Section 107 restrictions on discharges to water

Section 107 places restrictions on the grant of certain discharge permits, if after reasonable mixing, specified effects occur in receiving waters. Always check this section when you are considering applications for discharge permits made under sections 15 or 15A of the Act.

Section 105 – Matters relevant to discharge or coastal permits

Section 105 specifies additional matters to be considered if the application is to do something that would otherwise contravene sections 15 or 15B. These additional matters are; the nature of the discharge and sensitivity of the receiving environment to adverse effects, the applicants reasons for the proposed choice, and any possible alternative methods of discharge, including discharge into any other receiving environment.

National Environmental Standards

Section 107(3)(c) of the Act specifies that we cannot grant a resource consent contrary to any regulations made under the Act. National Environmental Standards (NES) made under section 43 of the Act fall into this category. To date only NES relating to Certain Air Pollutants, Dioxins, and Other Toxics are in force. When assessing an application for discharge of contaminants to air, check if the NES applies and if so, check section 43B of the Act which specifies the relationship between NES and rules or consents.

Replacement consents

When considering an application for a replacement consent (affected by section 124), we must have regard to the value of the investment of the existing consent holder.

Matters not to be considered

Section 104 of the Act makes it clear that you should not take into account trade competition or the effects on persons who have given their written

approval (unless their written approval is withdrawn before a decision is made on the application).

10.15.3 Non-notified officer's report

The authority to make a decision on a non-notified application has been delegated to the Manager, Environmental Regulation (Wellington office), and the Manager, Environmental Regulation (Wairarapa office), and the Divisional Managers, of the Wairarapa and Environment Divisions. A report to the appropriate Department Manager is prepared by the processing officer for the application.



Report format – use standard letter L42.

QA

The draft of the report is given to another resource advisor for a quality control check (see Guide for QA of consent documents 10.20). Once checked it should be signed off (on the green form) by the officer who did the quality control check. The final file copy of the officer's report should also be initialled by the officer who carried out the quality check.

WP

The report is formatted by Word Processing and returned to the processing officer for signing before it is handed to the Department Manager. Please note that Word Processing is working to a maximum two day turnaround so you should allow them as much time as possible. In the Wairarapa, the processing officer organises the formatting of the report and the consent certificate with Word Processing.

10.15.4 Public notification or limited notification with no hearing officer's report

07/03/07

If there have been no submissions on the application, or there have been submissions and all matters have been resolved without the need for a hearing, the officer's report goes to the Manager, Environmental Regulation who has delegated authority to grant or decline the application.

The report to the manager should detail the negotiations and the agreed conditions with the reasons. Any technical information should be included in the report as an appendix.



Report format – adapt standard letter L43.

10.15.5 Public notification or limited notification with hearing officer's report



Report format – use standard letter L43. The report should contain all the relevant information and comment on how this relates to the legislative framework of the Act, and to GWRC policies and rules. The matters to be considered (section 104 of the Act) should be covered by the report irrespective of who is making the decision. In addition, relevant Environment Court decisions and past GWRC decisions should be referred to. If the application is for a new consent for an existing activity, the report should include any relevant monitoring information. The scope of the report and the depth of investigation, research and analysis should reflect the scale and significance of the proposed activity. Although the officer's report is targeting the hearing

committee or commissioner, it is a public document and should always be professional and consistent with GWRC policy.

QA The draft of the report is given to another resource advisor for a quality control check. The report must be QAed before it is passed to the Department Manager. Aim to get your report peer-reviewed 12 working days before the hearing. The processing officer should try and ensure that the draft report is available for review by the Department Manager at least 9 working days before the hearing so that the final version can be formatted in time to be sent to all parties. (It does not have to be in its final form at this stage).

WP The report is formatted by Word Processing and returned to the processing officer before it is handed to the Department Manager. Please note that Word Processing is working to a maximum two day turnaround so you should allow them as much time as possible. In the Wairarapa, the processing officer organises the formatting of the report and the consent certificate with Word Processing.

i The Act requires the officer's report to be with the applicant and submitters at least 5 working days before the hearing. Hence, it needs to be mailed more than a week before the hearing (i.e., 7 working days). The 2005 amendments to the Act now allow for pre-circulation of evidence prior to a hearing. Exercising this option is at our discretion. Where evidence is being pre-circulated 10 working days before the hearing under the provisions of section 41B of the Act, the officer's report will need to be with the applicant and submitters 15 working days before the hearing. In this situation, a hearing must be held within 40 working days of the close of submissions, as opposed to 20 (refer to section 10.16.2 of the manual)

You may also want to revise your estimate of costs at this stage. Once revised send the estimate to the applicant (use L11a).

10.16 Hearings

10.16.1 Statutory requirements

A hearing is the formal forum for considering notified resource consent applications. It gives the applicant and all submitters the opportunity to formally present their cases to a hearings committee or hearings commissioner(s). The committee or commissioner(s) must decide the application on the basis of the information they have before them and the evidence given at the hearing.

Section 39 of the Act requires that GWRC must hold the hearing in public, unless permitted to do otherwise to protect sensitive information, or otherwise under the Local Government Official Information and Meetings Act 1984. Section 39 also requires that hearing procedures:

- (1) avoid unnecessary formality; and
- (2) recognise tikanga Maori where appropriate and evidence received in either written or spoken Maori; and

- (3) permit only the chairperson or a member of the hearing body to question any party or witness; and
- (4) not permit cross examination.

Section 41A of the Act provides for GWRC to conduct the hearing differently using provisions of section 41B and 41C should the scale and significance of the application make it appropriate. In relation to evidence and submissions, we can direct:

- The order of presentation;
- That submissions be recorded or taken as read;
- That only part of submissions be heard; and
- That evidence presented be limited to that in dispute.

10.16.2 Pre-circulation of evidence

Section 41B gives us power to require applicants and some submitters (those who intend to call expert evidence at the hearing) to provide briefs of evidence to GWRC in advance of the hearing. Applicant evidence must be provided 10 working days before the hearing, and submitters must provide evidence 5 working days before the hearing.

NB if using these provisions the timeframe for receipt of the officer's report also changes (see section 10.16.8).

The decision to use the powers set out in Section 41B will be made by the Department Manager in consultation with the processing officer, team leader and chair of the hearing committee.

10.16.3 Setting a hearing date

- i** A hearing must be held within 25 working days of the submission period closing (section 101 of the Act). If we use the provisions of section 41B the timeframe by which a hearing must be held is 40 working days.

This time limit may be extended to 50 working days (or 80 working days if 41B is being used) by the Department Manager on the recommendation of the processing officer. Extensions are usually to allow for negotiations between the parties (see also 10.13.1). If the applicant requests an extension under section 37 of the Act, or if further information is requested, the application is put on hold.

A hearing date is usually set down provisionally following the close of submissions. The hearing date is arranged by a team leader/processing officer in conjunction with the Chairperson of the Environment Committee or Rural Services and Wairarapa Committee (if Councillors are to hear the application). At this stage the Committee Chairperson and divisional manager will also determine who should sit on the Hearing Committee. If commissioner(s) will be deciding the application, suitable commissioner(s) are nominated by the team leader/processing officer and approached to ascertain their availability.

The Chairpersons of the Environment Committee and the Rural Services and Wairarapa Committee have the delegated authority to appoint a person to act as a commissioner on behalf of the Council, and also to appoint a commissioner to a particular hearing.

10.16.4 Notification of hearing date

All parties (applicants and submitters), including the Committee/Commissioner(s), must be notified of the date, place and time of the hearing at least 10 working days beforehand (section 101 of the Act). Greater notice should be given when possible. If the provisions of section 41B (provision of evidence prior to the hearing) are being used sufficient notice of the hearing shall be given to allow a reasonable time for preparation of evidence by applicants and/or those submitters requested to provide briefs of evidence prior to the hearing.

- ☆ Best practice - If practicable you should telephone the applicant and submitters to personally advise them of the hearing.

Standard letter L17 needs to be sent to the applicant and every person who made a submission.

If section 41B provisions are being used then standard letter L81 should be sent to the applicant and every submitter who will be calling expert evidence at the hearing). This letter should be sent as soon as possible after the hearing date is set to provide sufficient time for the expert evidence to be prepared and provided to GWRC within the specified timeframes.

or section 41C (directions and requests before or at hearings) are used the standard letter

10.16.5 Using councillors or commissioners

The Chairperson, Environment Committee or Rural Services and Wairarapa Committee chair most hearings with one or two other Councillors making up the members of the hearings committee. Each hearing committee appointed has delegated authority to hear and decide the outcome of the consent applications it is appointed to.

If there is any conflict of interest for GWRC the application will be heard and determined by independent commissioner(s). Independent commissioner(s) may also be used if the applicant requests them. Also section 223CA of the Local Government Act 1974 requires GWRC to appoint commissioner(s) to decide resource consent applications for water takes from the Water Group of Utility Services Division.

A commissioner is appointed on a case-by-case basis for their technical knowledge and/or experience in chairing hearings and decision making. The Chair of the Environment Committee and the Rural Services and Wairarapa Committee have delegated authority to appoint independent commissioners.

There are Guidelines for Hearings Commissioners (G5) which must be supplied to the appointed commissioner with information on the application(s) they are to consider.

NB: The cost of commissioners is borne by the applicant. Applicants should be advised of this fact at the earliest opportunity.

Guidelines on the use of commissioners for hearings under the Act

The following bullet points set out the situations where GWRC will use Commissioners to determine a resource consent application. Our general preference is to use Councillors to determine resource consent applications wherever possible. However, we should consider using Commissioners where:

- *the applicant requests commissioners;*
- *GWRC is both the applicant and the consent agency;*
- *GWRC is both a submitter and the consent agency;*
- *GWRC has a financial interest in the applicant, a submitter or the proposal;*
- *GWRC has made a submission to a territorial authority in respect of an application to be heard jointly with the Council;*
- *GWRC has taken an advocacy position with respect to the proposal under consideration; or*
- *specialist knowledge is required to assess the proposal.*

As noted above, under the Local Government Act 1974 GWRC is *required* to use Commissioners to hear any resource consent application by GWRC's Utility Services Division.

10.16.6 Arranging the hearing

27/06/06

The following administrative actions must be carried out by the team leader when a hearing date is determined:

(use F12 checklist for Resource Consent Hearings)

a) Book venue:

Determine the expected duration of the hearing and book a venue. If an outside venue, charge to the project code for the application. Generally hearings are held in the Council Chamber, Level 5, GWRC (Wellington) or the Committee Room, Masterton Office. If the Council Chamber or Committee Room are not available, or if it is more appropriate to hold the hearing elsewhere, an alternative venue must be found. If the application relates to a local issue and the applicant and submitters are principally from that area, a venue is chosen which is close to the location of the proposed activity.

b) Arrange refreshments:

Organise separate morning and/or afternoon tea and lunch for the hearings committee/commissioner(s) and morning and/or afternoon tea for the applicant and submitters. Charge to application project code - keep in mind that applicant will have to pay.

c) Advise Council Secretariat:

Write a memorandum (L16) to the Council Secretariat advising of the time, date and venue of the hearing, who is on the Committee, and a brief description of the application (processing officer in Wairarapa, team leader in Wellington). Support Services (Wairarapa) or Committee Services (Wellington) will publicly advertise the hearing.

d) Appoint Hearing Committee:

Arrange the formal appointment of the Hearing Committee/Commissioner(s) and GWRC's delegated authority for the committee/commissioner(s) to consider and decide the application. Use standard letter L13 which can be amended for appointment of commissioners. The appointment form is signed prior to the hearing by the Chairperson of GWRC, Chairperson of the Environment Committee or the Rural Services and Wairarapa Committee and the Divisional Manager, Environment or Divisional Manager, Wairarapa.

e) Confirm hearing arrangements to councillors/commissioners:

Send a memorandum confirming hearing arrangements (L15) to the councillors involved in the hearing. If commissioners are appointed use the standard letter L10.

f) Obtain recording equipment if needed

If the hearing will be recorded, obtain any necessary recording equipment.

g) Organise a site visit for the Committee/Commissioner(s)

Only if the application relates to an activity and area they may not be familiar with.

The team leader will discuss all hearing arrangements with the processing officer to ensure that there is no conflict. The team leader, in consultation with the processing officer and, where necessary, the Departmental Manager, will determine who will attend the hearing to support the processing officer and who will write the decision (usually the buddy) for the Committee/Commissioner(s), if required. The applicant and submitters should be asked if any special aids are required at the hearing venue, such as video equipment, overhead projector, display boards, white boards.

10.16.7 Directions and requests before or at the hearing

Section 41C allows GWRC to make a number of direction or requests at or before the hearing. These give us greater control over a hearing and provide us the ability to restrict the duration of a hearing, particularly where there are only specific matters in dispute.

Specifically GWRC may:

- (1) direct the order of business at the hearing, including the order in which evidence and submissions are presented; or
- (2) direct that evidence and submissions be recorded, or taken as read, or limited to matters in dispute; or
- (3) direct a person who has made a submission, when presenting a submission, to present it within a time limit.

At the hearing GWRC can direct a person presenting a submission not to present the whole submission, or those parts of it, that are irrelevant or not in dispute.

Under section 41(C)(7) of the Act as amended in 2005, it is anticipated that the ability to strike out vexatious submitters will exist in the future. In this instance, the consent authority can direct that all or part of a submission be struck out if it is considered that the submission (or part of it) is frivolous or vexatious. In this instance, the submitter has a right of objection under section 357 of the Act. **However, this provision will not come into force until August 2007**

Further information requests:

Before or at the hearing GWRC can request submitters to provide further information. At the hearing the applicant can also be asked to provide further information. The section 92 timeframes do not apply to these requests

At the hearing GWRC can commission a report under section 41(C)(4) of the Act if it is considered that the activity may have a significant adverse effect on the environment, and the applicant agrees to the commissioning of the report. The report must be provided to the applicant and all submitters.

10.16.8 Distribution of officer's report to applicant and submitters

- 1 The Act requires the officer's report to be with the applicant and submitters at least 5 working days before the hearing. Hence, it needs to be mailed more than a week before the hearing (i.e., 7 working days).
- 1 If the provisions of 41B are being used then the applicant and submitters need to have the officer's report at least 15 working days prior to the hearing.

10.16.9 Information for hearings committees or commissioners

Hearings committee members or commissioners should be provided with copies of the application(s), including the AEE and any associated reports, any additional information received or reports commissioned, pre-hearing meeting notes, submissions and the officer's report.

These documents should be bound together with a cover sheet (L12) and posted out at least 6 working days before the hearing

The actual format of the hearing will be largely up to the Hearings Committee (see below).

10.16.10 Status of the officer's report at the hearing

At the commencement of the hearing the chairperson will set out the order of proceedings. At the time determined by the Chairperson, the officer's report will be tabled and the officer responsible may speak to any points of clarification if requested. You do not have to read your report at GWRC hearings, however, it is likely that you will be expected to provide a brief overview of the key points contained in the report, and to highlight any particular areas of interest or contention for the benefit of the hearing committee.

It is also likely that the processing officer will have the opportunity to have a right of reply after all submitters have spoken, in which case they may wish to submit points of clarification before the applicant begins their right of reply. Points of clarification should be limited to areas which the applicant or submitters have raised that the processing officer believes to be incorrect. If possible, it is best to submit these points as a written memo to the hearing committee. (It may be difficult to prepare a written memo due to the timing of the hearing.)

10.16.11 Conduct of hearing

Hearing procedures are directed by the chairperson who will set out the order of proceedings at the commencement of the hearing. The applicant and submitters may give evidence at a hearing, either personally or through their representative. The Act stipulates that only those who have indicated they wish to be heard have the right to speak at the hearing. However, a submitter is able to change their mind at any stage prior to the hearing. Submitters are unable to raise issues that were not covered in their written submissions. Points may be elaborated but no new issues should be raised. Generally the procedure is as follows:

- introduction and explanation by the chairperson;
- record of attendees (use L14);
- applicant presents the application(s);
- officer's report is presented;
- submitter(s) speak on their submissions;
- Officer response (if required)

- applicant responds;
- hearing is closed or adjourned.

The hearings committee will discuss the application and make its decision with reasons.

- ☆ Best practice is to conclude and close the hearing within 5 working days of the last public hearing day, unless the decision maker(s) determine that further information is required and the public process is resumed, in which case the hearing should be concluded within 5 working days of the last public part of the process.

10.16.12 Reconvening a hearing

Use standard letter L29

10.16.13 Closing the hearing

Following the completion of evidence to the hearing (i.e., the public participation), the chairperson of the Committee or the Commissioner(s) may adjourn or formally conclude the hearing.

Best practice is to conclude and close the hearing within five working days of the last public hearing day, unless the decision maker(s) determine that further information is required and the public process is resumed, in which case the hearing should be concluded within 5 working days of the last public part of the process.

10.17 Hearing decision report

10.17.1 Assisting the hearing committee or commissioner with decision

Once a Hearing Committee or Commissioner has been appointed, the processing officer will discuss with the Committee/Commissioners what assistance they require from staff in drafting the decision. There may be occasions when they wish to draft the decision without assistance, or with limited assistance. The decision drafter (usually buddy to the processing officer) will be appointed prior to the hearing commencing. They must attend the entire hearing, taking notes of the proceedings, as appropriate. The decision drafter must not be the same person who prepared the Report to the Hearing Committee. If a hearing has been taped, the completed tapes are made available to the drafter. The tapes should be retained until 15 working days after the hearing. If there are appeals, the tapes should be retained until after the appeals have been decided.

10.17.2 Decision format

The decision is drafted under the following headings, unless the committee or commissioner(s) request otherwise, and needs to meet the requirements of section 113 of the Act (as amended in 2005):

- Heading (including decision, e.g., granted, granted with conditions or declined)
- The applications
- Statutory requirements – the relevant planning provisions
- The principal issues that were in contention
- Summary of evidence heard
- Main findings of fact
- Reasons for the Decision (including reasons for conditions)
- Formal Grant or Decline (including conditions)

Where evidence has been supplied in written form you only need to broadly summarise what was said and simply refer to the evidence that is retained on file. Where evidence is given orally only you may need to provide a more detailed record. Where the consent has been granted for a shorter duration than specified in the application, the reasons for deciding on a shorter term need to be given.

10.17.3 Drafting the decision

The decision drafter will be required to sit with the Hearing Committee or Commissioner(s) while they deliberate on their decision. The drafter should keep notes of instructions. The Committee or Commissioner(s) cannot receive any further technical advice without reconvening the hearing. The decision is reached on the basis of information provided by the applicant, the submissions, any additional information, the report of the pre-hearing meeting, the officer's report and the evidence presented at the hearing. The Committee or Commissioner(s) must record the decision and the reasons for the decision. The drafter must receive direction on both these matters. Once the drafter is satisfied that the first draft of the decision is complete, s/he will forward it to the Hearing Committee or the Hearing Commissioner(s) for consideration. It may be necessary to have a number of meetings with the Committee/Commissioner(s) to *work-up* the draft to the satisfaction of the Committee/Commissioner(s).

The decision drafter will ensure that the final draft decision is QA'ed by the processing officer. The decision drafter can perform the QA if the decision has been written by the Hearing Committee/Panel Chairperson. Otherwise the processing officer will perform the QA. The QA should focus on technical and grammatical errors or errors of fact, and not on the substance/content of the decision as the decision reflects the view of the Committee/Panel not council officers.

The final draft of the decision is then forwarded to the Committee/Commissioner(s) for their confirmation before being signed by the Committee Chairperson. All members of the hearing committee must be happy with the decision before it is signed by the Committee Chairperson. The decision can then be distributed to the applicant and submitters. A copy of the decision is also sent to each member of the committee.

It is worth noting that in some instances, particularly when independent commissioners are being used, the hearings committee may wish to prepare the

decision themselves. This is fine, but it should be recognised that this usually increases costs to the applicant so they should be made aware of the fact the commissioners/hearing committee will be preparing the decision themselves.

10.17.4 Distributing the decision

As soon as the decision is completed and signed, send a copy of the decision to the applicant and the submitters. Place a copy of the decision on the file.

Once the hearing has been formally closed, the decision must be released within 15 working days.



A notice of decision letter to the applicant (L22 or L21) should be included with the decision (see 10.17). For submitters use L33.

The consent certificate will be sent out once the period for appeals is over, i.e., 15 working days from when the decision was notified (see 10.18 and 10.19).

10.18 Notice of decision

10.18.1 Statutory timeframes

Under section 115 (unless timeframes have been extended) the notice of decision on the application must be served as follows:

- Non-notified – no later than 20 working days after the application was lodged
- Notified consent or if notice served (limited notification) and no hearing is held – 20 working days after close of submissions
- Notified consent or if notice served (limited notification) and hearing is held – 15 working days after close of hearing

10.18.2 Applicant

The grant or decline letter is a standard document (L21 or L22 for notified consents and L2, L3 or L4 for non-notified consents). The letter is formatted by Word Processing and returned to the processing officer. The letter must specify:

- Date application granted or declined.
- Consent processing charges.
- Annual charges.

The draft of the grant or decline letter is given to another resource advisor for a quality control check. The following items should be checked:

- Correct grant date.
- Costs calculated correctly (i.e., costs added up without GST and then GST added to the final total).
- Annual charging correct.

Once checked it should be signed off (on the *green form*) by the officer who did the quality control check.

See Chapter 15 for charging information.

10.18.3 Submitters

Use standard letter L33

10.19 Consent certificate

The certificate is a legal document and must be correct. The front page of the certificate and any attachments must be signed by the Department Manager who has delegated authority. The grant date is the date that the Department Manager makes a decision on the application. The date the consent commences and may be different from the grant date.

It is important that the consent is issued to the correct legal entity. See table summary in Appendix B for further guidance.

The certificate is available as a document template (L7). The certificate is formatted by Word Processing and returned to the processing officer for checking before it is handed to the Department Manager. Please note that Word Processing is working to a maximum two day turnaround so you should allow them as much time as possible. In the Wairarapa, the processing officer organises the formatting of the report and the consent certificate with Word Processing.

The draft of the certificate is given to another resource advisor for a quality control check (see Guide for QA of consent documents 10.20). Once checked it should be signed off (on the green form) by the officer who did the quality control check. The front page of the final file copy of the consent certificate should also be initialled by the officer who carried out the quality check.

Note: the Department Manager will only sign a consent certificate when it has been initialled by the person carrying out the QA and the green QA box has been filled out.

Under section 133A of the Act (as amended in 2005) we have the ability to correct minor mistakes or defects in the consent, within 15 working days of the consent being granted.

For a publicly notified or limited notification consent application, the consent certificate should be sent to the consent holder when the period for appeals is over, i.e., 15 working days from when the decision was notified (see 10.17)

10.20 Commencement of consent

Section 116 of the Act sets out the timeframes for commencement of granted resource consents.

Where a consent has been granted and was notified or notice served, the commencement date for the resource consent will be:

- 15 working days after the date the decision was notified (if there are no appeals under section 120) unless the resource consent states a later date; or
- If there are appeals then consent commences when Environment Court determines the appeal or when the appeal is withdrawn or

Where a consent has been granted without notification; or it is notified and there are no submissions or if all submissions are withdrawn, the consent commences on the following dates :

- When the decision is notified or a later date stated in the consent;
- if there are appeals then the commencement date will be when the Environment Court determines the appeal or the appeal is withdrawn;
- if there are objections (section 357) the commencement date is when the objection is decided by GWRC
- if there are appeals (section 358) against GWRC's decision on the objection the commencement date is when the appeals are determined by the Environment Court or are withdrawn.

Best practice - Where an applicant wishes to commence an activity as soon as possible, you should ensure that they are aware of these requirements.

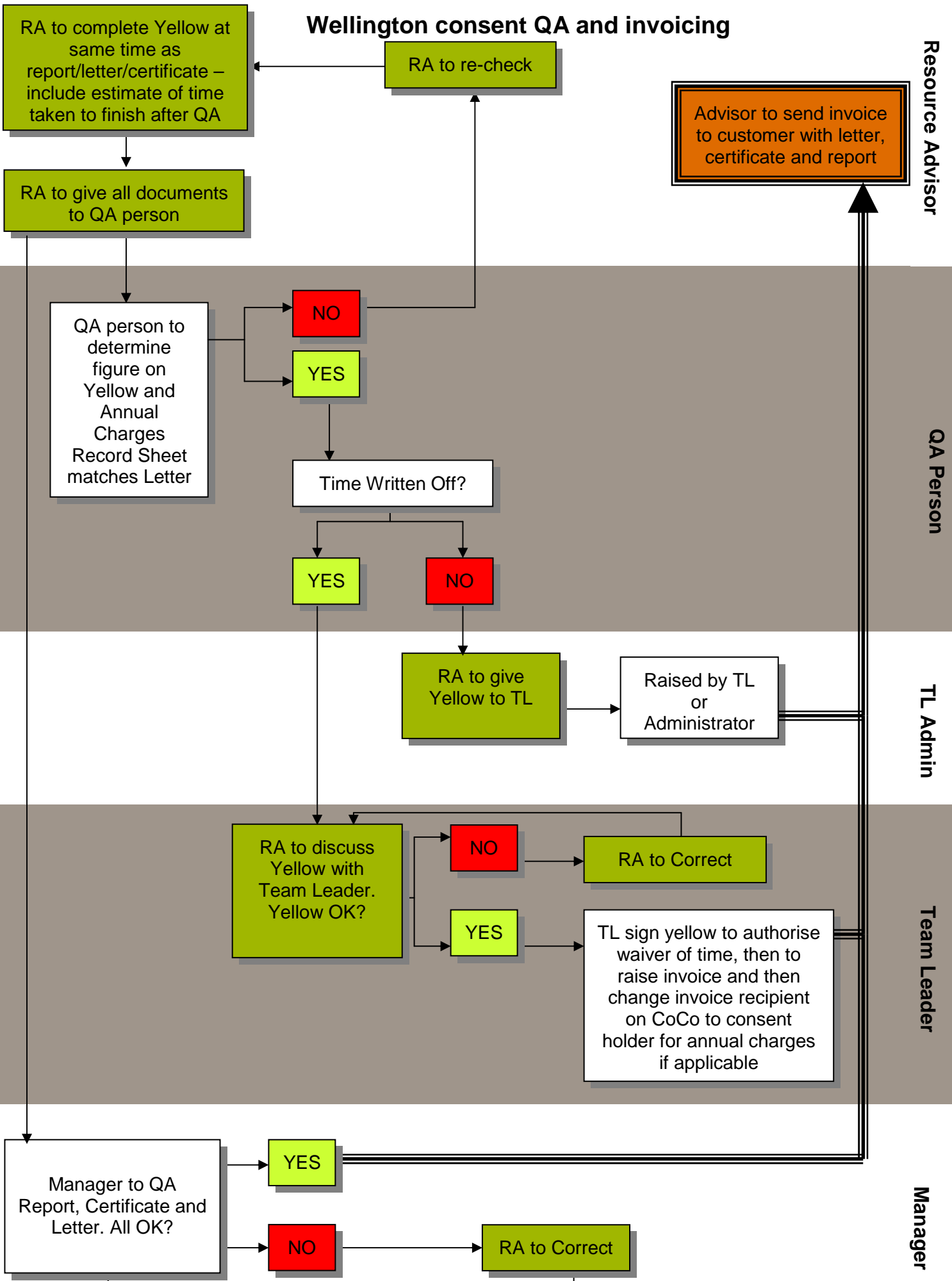
10.21 QA of consent documents

Use standard form (F50) QA Checklist

10.22 Wellington consent QA and invoicing procedure

In the Wellington office we aim to send the invoice for any additional charges to the consent holder at the same time that their consent is granted or declined. See the flow chart for details.

Wellington consent QA and invoicing



Chapter 11

Restricted coastal activities

11.1 Criteria for restricted coastal activities

Regional Coastal Plan

A restricted coastal activity (RCA) is one of a number of activities that a regional council must make provision for in a regional coastal plan. A restricted coastal activity has to be included in a plan if the Minister of Conservation has required that the activity be so specified. The Minister can specify that an activity be specified on the grounds that:

- the activity is likely to have a significant or irreversible adverse effect on the coastal marine area, or
- the activity occurs or is likely to occur in an area of significant conservation value.

Restricted coastal activities

Restricted coastal activities are outlined in the Regional Coastal Plan.

The procedures for applications for coastal permits for restricted coastal activities are similar to those for notified resource consent applications, with the addition of the following requirements:

Processing of coastal permits for RCAs

- The appointment of an additional member to the hearing committee by the Minister of Conservation, with the hearing committee making a recommendation to the Minister on the application.
- Additional notification to parties of the committee's recommendation.
- The Minister of Conservation then makes the final decision on the consent application.

The procedures for restricted coastal activities are set out in sections 117-119 of the Act.

11.2 Distribution of application

Applications to GWRC to carry out restricted coastal activities must be forwarded promptly to Minister of Conservation. The Minister's office will forward the application to the Department of Conservation to determine a suitable appointee to the hearing committee. Notification and distribution of the application is the same as for other notified applications (Chapter 10).

11.3 Liaison with Department of Conservation and Minister's appointee

An officer of the Department of Conservation will advise the processing officer when an appointment has been made to the hearing committee. The processing officer then maintains contact with the appointee to ensure that s/he has copies of all relevant information on the application, is advised of important dates and is included in site visits.

Please note that when you are arranging for the Minister of Conservation to appoint his/her representative you should sort out the issue of who pays for the representative and how much they are entitled to.

If the Minister wishes (GWRC and thus the applicant) to pay the costs of the Minister's appointee then the applicant must be consulted in the normal way. If the applicant is reluctant to pay or there are any other reasons why they should not have to pay then you should discuss it with your team leader or Departmental Manager in the first instance.

11.4 Recommendation of the hearing committee

The outcome of the hearing will be a recommendation to the Minister of Conservation. As for other applications, the recommendation is to be in writing and include reasons, in accordance with sections 104-108 of the Act.

Serving notice

Copies of the recommendation to the Minister of Conservation must be served within **15 working days** after conclusion of the hearing to:

- the Minister of Conservation;
- the applicant; and
- every submitter.

A notice of the committee's recommendation must be served within **15 working days** after conclusion of the hearing to:

- every other person who was directly notified of the application; and
- such other persons or authorities as the Committee considers likely to be interested in the recommendation.

The notice of recommendation must:

- summarise the recommendation; and
- state where the full recommendation is available for public inspection (if the full recommendation is not sent).

Once the recommendation has been sent to the Minister, GWRC involvement in the application is complete except for the distribution of the Minister's decision

(see 11.5 below). The invoice can be sent to the applicant once all costs have been charged (see Chapter 15).

Inquiry on a recommendation

An applicant or submitter has a right to call for an inquiry on a recommendation. An inquiry is essentially the same as an appeal and an applicant or submitter has **15 working days** from receipt of the recommendation, to lodge an inquiry.

The Minister of Conservation is required to make a decision within **20 working days** of receiving a recommendation of the committee, or within **20 working days** of receiving the decision of the Environment Court if a notice of inquiry was lodged. The Minister can, if s/he wishes, refer a recommendation back to the committee.

11.5 The Minister of Conservation's decision

Once the Minister has made a decision on the recommendation, a copy of the decision will be forwarded to GWRC.

The processing officer must circulate the decision to the applicant and the submitters. The processing officer will also complete the decision step on CoCo (see CoCo User Guide) and prepare a resource consent certificate.

11.6 Commencement of consent

A coastal permit for a restricted coastal activity commences at the time of granting by the Minister or such later date as stated in the consent.

Chapter 12

Joint processing of notified consents

12.1 Criteria for joint notified consents

RMA requirements

Section 102 of the Act requires joint hearings of notified consent applications where they are made to both GWRC and a territorial local authority. The procedures for applications that involve joint hearings are similar to those for notified resource consent applications. (See Chapter 10).

Liaison with Territorial Local Authorities

Ideally, if an application has been made to two or more consent authorities and is likely to be notified, the job manager should make contact with the appropriate person at the territorial local authority. The job manager should arrange a meeting with this person. The meeting will be used to determine who will be lead agency for the applications and the procedure for processing the application.

Section 102 stipulates that GWRC shall take the lead role in providing the administrative services, unless the other authority agrees that they should be responsible. We try not to be lead agency where the applications mainly pertain to local territorial authority issues.



The processing officer and team leader should attend the meeting with the local territorial authority. At the meeting the *Protocols for joint processing of notified resource consent applications* (F28) should be worked through to determine who will have what responsibilities.

Once all parties have agreed to their responsibilities, it is advisable that each party has a copy of the checklist. (The processing officer may prefer to write a letter detailing responsibilities rather than the checklist)

12.2 Notification



While the Resource Management Act does not require applications to be jointly notified, good customer service is to place advertisements for the applications to two different authorities, in the same newspaper at the same time. Each authority should draft their own advertisement which is then collated by the authority responsible for placing the advertisement (this will have been agreed previously). Details such as location, applicant, a general description of the activity, where the application can be viewed, details a submission must include, closing date for submissions and addresses for service will be common for both so only need to be included once.

Where GWRC is acting as lead agency it is the processing officer's responsibility publicly notify the application.

The local territorial authority may supply the processing officer with a list of parties, which they require to be notified. If GWRC is not the lead agency the job manager should supply the local territorial authority with a list of additional parties they want to be notified.

12.3 Submissions

If GWRC is lead agency the processing officer needs to collate all submissions, whether GWRC or the local territorial authority receives them. The processing officer must then ensure the applicant and the local territorial authority have a copy of every submission.



Where submissions are received that pertain just to GWRC matters, the processing officer must enter the submissions on to CoCo (refer CoCo User Guide). Submissions that refer to GWRC issues and local territorial issues should also be entered on to CoCo. Where submissions raise issues only in relation to local territorial authorities, the submissions **should not** be entered on CoCo.



A summary of submissions should be sent to the applicant and submitters. The processing officers should have agreed upon who compiles the summary of submissions earlier.

12.4 Pre-Hearing meeting

Ideally it is best to hold a joint pre-hearing meeting. The procedure for the pre-hearing is the same as out lined in Chapter 11. Where GWRC is acting as lead agency it is the processing officer's responsibility to make all arrangements for the pre hearing meeting as per section 10.11. Note: The processing officer will need to co-ordinate with the processing officer of the local territorial authority to ensure the arrangements are suitable and they are aware our pre hearing meeting procedures.

If GWRC is lead agency, the processing officer is required to produce the pre hearing meeting report as per 10.12.7.

12.5 Joint hearings

A joint hearing is necessary unless the authorities agree that the applications are sufficiently unrelated **and** the applicant agrees that a joint hearing does not need to be held.

If GWRC is lead agency, it is the processing officer and team leaders' job to organise the hearing according to 10.16. Consultation with the local territorial authority must take place regarding the hearing, before anything is finalised.

The composition of the joint hearing committee is first agreed between staff of GWRC and city/district council and discussed with the Chairperson of the Environment Committee or the Rural Services and Wairarapa Committee. If one of the consent authorities has an interest in the application, a Commissioner or Commissioners will be appointed by the authorities to jointly hear and decide the

applications. The committee may be a mix, e.g., one commissioner and three Councillors.

As most authorities operate in a similar manner the procedures for joint hearings are similar to those for GWRC hearings, except that the committee must be appointed by both consent authorities, i.e., each member of the Committee must have delegated authority from both consent authorities. If a commissioner is to be appointed to a joint hearing committee see 10.16.5 for appointment details.

If GWRC is lead agency, the processing officer is responsible for sending out the notice of hearing (as per 10.16.4). Note: The Notice of Hearing for a joint hearing must make it clear that it is a joint hearing and the state the names of the consent authorities involved.

12.6 Decision

If GWRC is lead agency a decision drafter (usually buddy to the processing officer) will be appointed prior to the hearing commencing. The decision drafter will help the hearing committee as per 10.17.

Section 102(4) requires the decision of a joint hearing committee to identify those applications that each authority has responsibility for with respect to the administration of the consents, including monitoring and enforcement and the manner in which administrative charges will be allocated between the authorities.

Once the decision has been approved the processing officer or decision drafter (if GWRC is lead agency) is responsible for notifying the decision to the applicant and the submitters.

Each council is responsible for any appeals against their consents. If no appeals are received, or once all appeals have been resolved, it is each council's responsibility to issue resource consent certificates for those consents over which they have jurisdiction.

Chapter 13

Change or cancel resource consent conditions

13.1 Statutory basis

A consent holder may apply to GWRC to change or cancel any condition(s) of their consent, except the term of consent. Section 127 of the Act (as amended in 2003) states that the application should be treated as if it were an application for a resource consent for a discretionary activity with sections 88 to 121 to apply. However, when deciding the application we only consider the effects relating to the change or cancellation of the specific condition(s) in question.

The processing officer should be sure that a change or cancellation that has been applied for is not a fundamental change to the scope and/or scale of the activity, in which case a new application should be applied for and processed.

13.2 Procedure for processing application

A standard application form suitable for very minor changes or cancellations is available should the consent holder require it (F25).

The procedure is the same as that for applying for a resource consent for a discretionary activity, except that the notification requirements only relate to the effects of changing or cancelling the condition(s).

The WGN number for the consent remains unchanged, but a new CoCo application ID is assigned to the application. Once a decision is made on the section 127 application, the previous CoCo ID is superseded.

When determining who may be adversely affected by the change or cancellation, you must consider, in particular every person who:

- (a) made a submission of the original application; and
may be affected by the change or cancellation.

Note: If the effects on a person of the activity after the change or cancellation of condition are the same as the effects of an activity permitted by one of the plans, then that person may be treated as not being adversely affected.

13.3 Should the application be notified?

The decision whether or not to notify the application is delegated to resource advisor level.

- (a) The application may be processed as non-notified if:
 - the adverse effect as a result of the change or cancellation of the condition(s) will be minor; and
 - written approval has been obtained from every person GWRC considers may be adversely affected by the change or cancellation

of condition(s), unless it is unreasonable in the circumstances to obtain every such approval.

- (b) The application may be processed on a limited notification basis:
- If the effects of the change or cancellation will be minor, but not all written approvals of adversely affected persons have been obtained.
- (c) The application must be notified:
- If the effects of the change or cancellation will be more than minor.

13.4 Minor changes to consent conditions

For minor technical changes (eg. typos or for clarification purposes), a memo to the departmental manager with the reasons for the changes will be sufficient. (The manager will countersign it to indicate agreement.)

13.5 Notification of the decision on the application

If a change or cancellation of condition(s) is granted, the processing officer will advise the applicant and any submitters of the decision, send out an invoice to the applicant and update and send out new consent certificate(s) and then update records in CoCo accordingly.

The changes to conditions or cancellation of a condition should be recorded on the Consent Certificate as follows.

Change of condition

On the front of the consent certificate under the consent type write that it is a 'Change of Condition' and then note the number(s) of the conditions that have been changed. The condition that has been changed should be annotated with a footnote to say what date the change has been granted e.g.,

- 9.¹ After June 2002 there shall be no discharges to the air from the Wainuiomata Wastewater Treatment Pumping Station that are noxious, dangerous, offensive or objectionable at or beyond the boundary of the site as defined by Pt Lot 1 DP13941 and Pt Lot 2 DP13941. Said discharges include odour, dust and aerosols.

Cancellation of condition

On the front of the consent certificate under the consent type write that it is a 'cancellation of condition' and then note the number(s) of the conditions that have been cancelled. The condition that has been cancelled should be struck out and annotated with a footnote to say the date the cancellation has been granted e.g.

- 7.² ~~The permit holder shall carry out a Community Odour Survey annually until 2002, and shall report the results to the Manager, Environmental Regulation, Wellington Regional Council, within three months of completion of the survey. The design and extent of the survey shall be to the satisfaction of the Manager, Environmental Regulation, Wellington Regional Council. The first survey shall be conducted within 12 months of the commencement of the permit.~~

1 Condition changed under s127, granted 29/09/1999

2 Condition cancelled under s127, granted 29/09/1999

13.6 Restricted coastal activities

Section 119A of the Act gives residual powers to GWRC to consider and decide an application for change or cancellation of conditions by a consent holder for a restricted coastal activity. Before GWRC can exercise these powers, the Minister's written consent must first be obtained. The department managers have delegated authority to seek the Minister's consent to decide an application for a change of conditions on a resource consent for a restricted coastal activity.

Chapter 14

Review of consent conditions

14.1 When can we review consent conditions

The Act allows us to review the conditions (other than any condition relating to the duration of the consent) of any resource consent that we have granted. Where there is uncertainty about the potential effects of an activity, a review clause enables any adverse effects that arise at a later stage to be dealt with. Section 128 the Act limits the circumstances in which such reviews may be done as follows:

- To deal with adverse effects on the environment which may arise and is appropriate to deal with at a later stage
- To ensure that the consent holder adopts the best practicable option to deal with adverse effects, for discharge and coastal permits;. *This enables new, more effective technologies to be used as they are developed.*
- For other purposes specified in the consent
- To require a consent holder to operate within new rules relating to water quality and quantity as they are developed through regional plans to address resource issues that may not have been identified at the time the consent was granted.
- To require a consent holder of a water, coastal or discharge permit to operate within new rules when national environmental standards made under the Act come into force.

A consent can only be reviewed for the above reasons at times indicated in the consent conditions.

A review can be initiated at any time where the application for the resource consent contained inaccuracies that materially influenced the decision on the consent and the effects on the exercise of the consent are such that is necessary to apply more appropriate conditions.

14.2 How to initiate a review

If any of the circumstances set out in section 128 become relevant to a consent, the officer responsible should first discuss the matter with the department manager. The officer's reasons and justification for seeking a review should be set out in an internal memo.

The manager will make the final decision on whether a review should proceed or if, in fact, a new consent is required.

14.3 Timing of the review

The review condition will specify the time(s) when a review may be initiated. This time for initiating the review may be linked to either the grant date or the commencement date for the consent. For a notified consent, the grant date is the date that that Hearings Committee signed the decision. If a commencement date is referred to, then this date should be the same as the effective date on the consent certificate.

14.4 Notice of review to consent holder

If we decide to review a consent then we must issue a Notice of Review (under section 129 of the Act) to the consent holder.

The notice of review must:

- advise the consent holder which specific consent conditions are to be reviewed; and
- state the reasons for the review; and
- specify the information GWRC took into account in making its decision to review the conditions, except if the time and purpose for review was specified in the consent or if national environmental standards applicable to a water, coastal or discharge permit come into force; and
- the notice **may** also propose new conditions and invite the consent holder to propose new conditions within **20 working days** of service of the notice; and
- provide an estimate of any processing fees that will be charged for the review.

The notice of review to the consent holder must be checked and proof read by another staff member. The standard of checking should be the same as the public notice for a notified consent.

14.5 Deciding on whether the review should be publicly notified

Section 130 of the Act deals with public notification, submissions, hearings etc. relating to a review of consent conditions.

Sections 94 to 94C apply to the notification of the review with the proviso that you must treat the review of consent conditions as if it were an application for a resource consent for a discretionary activity. Therefore, where the adverse effects of the change of consent conditions on the environment are minor then notice of the review must be served on all persons who may be adversely affected by the change of conditions unless all such persons have given their approval in writing.

Where the adverse effects of the change of consent conditions on the environment are more than minor then the review must be publicly notified.

14.6 If the review is to be notified

If the review of consent conditions is to be publicly notified or notice served on persons who are adversely affected then you must serve notice or notify the review as follows:

- (a) 30 *working days* after notice is served on the consent holder (if the consent holder is invited to propose new conditions) or
- (b) 10 *working days* after notice is served on the consent holder (if the consent holder is not invited to propose new conditions).

Note you must include a summary of the Notice of Review (served under section 129 to the consent holder) when you notify the review.

14.7 Processing the review

Sections 131 and 132 of the Act set out the procedures for reviews as they differ from applications for resource consents.

The decision-making delegations for reviews are the same as for resource consents, i.e., the department manager decides a non-notified or limited notification review, and notified reviews are decided either by a Hearing Committee/Commissioner(s) or by the Environment Committee or Rural Services and Wairarapa Committee. There are special provisions for the Minister or GWRC to review the conditions of a resource consent for a restricted coastal activity, see 14.8 below.

Following the decision on a review, the processing officer will update the information in CoCo, advise the parties of the outcome as for a resource consent decision and send the updated resource consents to the consent holder.

14.8 Restricted coastal activities

Where the Minister of Conservation seeks a review of conditions the review can be dealt with in the same way as an application for a resource consent for a restricted coastal activity. Sections 96 to 102, 117 and 118 apply.

Section 119A of the Act gives residual powers to GWRC to consider and decide an application for change or cancellation of conditions by a consent holder and to initiate a review of conditions of a resource consent for a restricted coastal activity.

Before GWRC can exercise these powers, the Minister's written consent must first be obtained. The Minister can place conditions on such a consent. The department managers have delegated authority to seek the Minister's consent to initiate a review or consider and decide an application for a change or review of conditions on a resource consent for a restricted coastal activity.

Chapter 15

Resource consent charging

15.1 Charging policy

All of our consent processing charges have been fixed under section 36(1)(b) of the Act and are detailed in the Resource Management Charging Policy July 2001. You should be very familiar with the charging policy.

As a general rule costs should not be a surprise to applicants.

15.2 Application fees

The Resource Management Charging Policy sets out the up front charges for non-notified and notified applications. These application fees are also listed in Resource Consent Application Form 1.

These charges are the average cost of processing consents as the cost of processing may vary depending on the nature and complexity of the application. Where the cost of processing is less than the application fee we give a refund; where the cost exceeds we invoice the applicant for these additional charges at the time the consent is granted.

Note: where additional charges are invoiced the applicant has the right to object to these charges under section 357B.

15.3 Charging for pre-application advice

Our policy is to provide one hour of pre-application advice free of charge. However, if the activity is a major one and involves considerable demands on our resources we may need to charge the applicant for our time.

If you consider that it may be appropriate to charge for pre-application advice you must advise the customer in advance so that they have the option of using another source of information (such as a planning consultant or lawyer). *You should never begin charging time to an applicant without telling the applicant first.* You should advise the prospective applicant of the cost of the advice. It may also be appropriate at this point to provide an estimate for the job as a whole.

Charging for staff time, and for any outside advice on applications which require extensive pre-application checking and discussion, may start when the first draft of the application documents are received.

15.4 Cost estimates

For major applications (including all notified consent applications), applicants should be given an estimate of the likely cost of processing their application(s) as early as possible in the process, ideally once you have verified lodgement requirements or as soon as the application has been publicly notified.

Use standard letter L11 for your estimate of costs.

The estimate is not a statement of what the cost of consent processing will be, but a best estimate of what is known about the application. You should state the assumptions underlying the cost estimate, e.g., based on 20 submissions and a hearing with councillors. We have a responsibility to make our estimates as accurate as possible. An inaccurate estimate can cause financial difficulty to applicants and may expose GWRC to the risk of a formal objection.

When an application looks like it may exceed the estimate of costs provided you should notify the applicant before the extra costs are incurred. A good time to revise your estimate of costs is after the close of submissions. You should always provide a second estimate of costs prior to the hearing.

Use standard letter L11a for your revised estimate of costs.

Applicants for large activities should be given the opportunity of paying on monthly invoices. They should also be given the option of having regular updates as to the charges they have incurred.

15.5 Keeping track of charges

Time spent processing an application should be charged to the project code set up for that application. The two main types of charges are:

- (1) Officer Time, i.e., time spent working on the relevant application by resource advisors, which is recorded on fortnightly time sheets and the Yellow cost sheet.
- (2) Other miscellaneous costs incurred in processing the consent, such as; colour copying, advertising costs, hireage of rooms for pre-hearings and/or hearings, lunches, consultant fees, time spent on consent applications by staff in other departments/internal consultants, etc.

These charges are passed on to the applicants as disbursements.

Both types of costs are entered into SAP, so costs against consent numbers can be constantly viewed. Accordingly the processing officer should ask their team leader for a print out from SAP to keep an eye on what will be charged. If it is apparent that the costs will exceed the standard fee, the applicant should be advised before it happens and then kept informed on an ongoing basis as processing costs rise (see 15.4 above).

15.6 What to charge for

Processing officers, in conjunction with their team leaders, need to exercise a certain amount of discretion when charging time against applications. The following is a guide to help processing officers determine what costs they should pass on to the applicant.

	Charge	Do not charge
Database	Entering and granting of application in the Database	Time spent on problems associated with entering a consent on the Database
Consent administration	An applicant has not done any pre-application consultation. Time spent explaining the proposal to affected parties/potential submitters.	An applicant has consulted everybody reasonable and parties continue to object, even though their objection is not really related to our matters for consideration. You spend time trying to resolve their issues
	Mail-outs/Mail-merges you do yourself Hall hire / Printing / Photocopying / Advertising	Time spent explaining an application and the consent process with potential submitters
Application assessment	For a replacement consents, researching previous consent files to see what has been done in the past	Legal opinions (unless cleared with the applicant first)
	Assessment of information by consultants	A policy/rule in a plan is unclear and has never been tested - you spend extra time ensuring the correct interpretation
	Researching a particular contaminant or scientific component detailed in the application (if directly relevant and important)	Important to use caution here. An applicant should not be paying to get us up to speed - use your discretion when determining charging.
		Ensure that any research/data collection is related to the application and is not information we should hold as a component of our State of the Environment monitoring functions
	Time spent researching case law to support your report. Use careful discretion.	
	Time spent assessing submissions	
	Report writing	

Pre-hearings and hearings	Preparation for a pre-hearing meeting or hearing as a processing officer, facilitator or decision writer	Time spent advising about pre-hearing/hearing procedures
	Attendance at pre-hearing/hearing as reporting officer/decision writer (while two officers will typically attend a hearing, the cost of only one officer's time will be charged to the applicant.	An officer from a TA (joint hearing) requires persistent chasing up
	Councillors attendance at hearing	A Hearing Committee requires persistent chasing up to release the decision
Site visits	Time spent on site during visit	Time spent travelling to and from site
Charging	Working out annual charge and cost sheet	
	Use of external consultants for technical reviews (providing that they are cleared with the applicant first.	

All time should be noted on the yellow cost sheet whether charged or not.

15.7 Additional charges or refunds to applicant

Once a consent is completed, the processing officer works out the final cost of processing the application. The cost of processing the application should be worked out exclusive of GST and then subtracted from the application fee (exclusive of GST). If the costs are greater than the application fee an invoice will be required. If the costs are less than the application fee a refund will be required. The processing officer advises the applicant of the costs outstanding or of the amount refundable in the notice of decision letter.

In Wellington, the Yellow cost sheet should be completed by the processing officer and passed to the team leader **on the day the consent is granted** so the invoice or refund cheque can be generated.

15.8 Internal charges

An internal charge is a transfer of money from one GWRC department to another.

There are two types of internal charge:

- (1) full recovery of consent processing costs when a GWRC Department is the applicant; and
- (2) time spent on consent applications by staff in other departments. In Wellington, a Resource Consent Application Response Form (F8) must be used for this type of charge. Once a team leader signs the form, it can be sent to Finance who enter the details against the appropriate project code.

15.9 Invoicing by team leaders

15.9.1 Internal customers

When charging a department within GWRC for a resource consent (i.e., GWRC is the applicant), an internal charge form is used instead of an invoice. (Internal charge forms are for internal use only). Monies must still change hands to enable consents to reach a zero balance on a project code.

15.9.2 External customers

Wellington office

When an applicant pays an application fee, the money is offset against processing officer time and miscellaneous costs. Once a consent has been granted, and the applicant's account is in debt by more than \$15 an invoice is sent out by the team leader for the balance owing. The team leader is to ensure that all costs have been recorded before sending the invoice. If the amount owing or the time spent on the application appears to be in error, it should be checked with the processing officer.

To view charges against a consent application run a Project Actual Cost Line Item report in SAP (your team leader can do this for you). The report will show the application fee as a credit and give breakdown of the debits. The amount to invoice is the difference between the debits and the application fee.

If an applicant has requested monthly invoicing, an invoice is generated in the same manner as above, except the invoice is raised for those costs that have been incurred over the last month. When all costs have been charged to the applicant, the project code can be closed. This is done by the divisional accountant.

If a consent costs at least \$15 less than the application fee to process, a refund must be given.

Wairarapa office

On granting the consent the job manager gets a total of hours spent and charges made on the application from SAP up to the last input time sheet. In the Wairarapa, job managers enter details on an invoicing form, have it signed off by the team leader and send to Support Services for entering and printing off in SAP. For time spent since the last time sheet, records in diaries need to be checked for each staff member who has worked on the application. Once total

hours are known the job manager multiplies hours by \$70 to get total labour costs.

Disbursements are kept separate, i.e., vehicle costs. Total up costs and calculate GST. If costs exceed the fee paid, a hand written invoice is then prepared to be sent to the applicant with the resource consent. If costs are at least \$15 less than the fee paid, a refund cheque is requested through Support Services. The refund cheque is sent to the applicant with the resource consent including a covering letter explaining the costs incurred and the refund.

The white copy of the invoice is sent to the applicant.

The yellow copy of the invoice is sent to Support Services for entering.

The other two copies are left in the invoice book.

15.10 Objections to additional charges

Any person required to pay an additional charge for their consent processing may object in writing to GWRC within 15 working days. See section 357B of the Act and Chapter 19.

15.11 Annual charges

In addition to a processing charge, consent holders receive an annual administration, consent supervision and monitoring charge as outlined in the Resource Management Charging Policy July 2001.

These annual charges cover the financial year, i.e., from 1 July to 30 June and are payable in advance. All annual charge invoices are raised in September/October each year.

In the notice of decision letter you must also itemise the annual charges relating to the consent. How you have calculated these annual charges must be recorded on the Annual Charges Record Sheet (F49).

Where a consent has been reviewed under section 128 or changed under section 127 of the Act you must specify whether or not annual charges are to remain the same or if they have been recalculated in the notice of decision letter.

27/06/06

Chapter 16

Transfer, surrender, lapse and cancellation of resource consents

16.1 Transfer to another person on the same site

The consent holder may transfer all or part of their right to exercise their consent to another person (owner or occupier only in some cases) to carry out the same activity at the same site. (Sections 134, 135, 136 and 137 of the Act).

Consents should be transferred when a property, such as a boat shed or farm, is sold. Until Greater Wellington receives written advice of the transfer, compliance with consent conditions and liability for annual charges, continues to be the responsibility of the previous consent holder.

Note – consent may not be transferred to another person if the consent states otherwise.

Consent type	Circumstances in which consent can be transferred	Standard Form
Land use consents (s.9)	All land use consents (except those for use of a river or lake bed) “attach” to the land that they are on – so do not need to be transferred to the new owner or occupier of the property – unless the consent states otherwise.	N/A
Land use consents for use of river or lake bed (s.13)	Consent holder may transfer consent to another person unless consent states otherwise	F24(c)
Coastal permits	Consent holder may transfer consent to another person but not to another site – unless permit or Regional Plan states otherwise	F24 F24(b) Swing Moorings
Water permits	Consent holder may be transferred to another owner/occupier of the site where the water permit is located. Transfers can be for a limited period and may involve all or part of the permit.	F24
Discharge permits	Consent holder may only transfer to another owner/occupier of the site where the discharge is located or to a local authority - unless permit states otherwise. Discharge permits cannot be transferred if the transfer would worsen the actual or potential environmental effects or would contravene an NES.	F24

16.1.1 Processing the transfer



The appropriate *Transfer of Permit Form* (F24), F24(b), F24(c) should be signed by both the previous and the new consent holder.

Before the consent can be transferred SAP should be checked to ensure there are no outstanding charges. If there are outstanding charges, these should be paid before the consent is transferred.



The transfer details need to be entered on CoCo. (See CoCo User Guide)



Acknowledge the transfer to the new and previous consent holder. Send a consent certificate in the new consent holders name and any relevant brochures to the new consent holder. Use standard letters L40 and L41.



Make sure the new consent holder is aware of any annual charges that may be associated with the consent.

Make sure the files are updated

16.2 Transfer to another site

An application to transfer a water permit to another site may only be considered where both sites are in the same catchment (upstream or downstream) or aquifer.

The Regional Freshwater Plan provides for the transfer of permits between sites as a discretionary activity. Therefore, the application for transfer must be treated as if it was an application for a new resource consent. Greater Wellington must also consider the effect of the proposed transfer, including the effect of ceasing or changing the current activity, and the effects of allowing the transfer.

Consent type	Circumstances in which consent can be transferred	Standard Form
Water permits (other than damming or diverting)	Consent holder may transfer to another person on another site, or to another site, if both sites are in the same catchment or aquifer – so long as the transfer is allowed by the Regional Plan and approved by Greater Wellington. Transfers can be permanent or temporary.	F24(a)
Discharge to air permits	May be transferred where both sites are in the same air shed. But cannot be transferred if the transfer would worsen the actual or potential environmental effects or would contravene an NES.	

16.2.1 Notifying the application to transfer

The decision whether to notify the application to transfer is delegated to resource advisor level and should be based on the degree of effect of the proposed site change. In some cases there may be positive advantages to transferring to another site.

If the application to transfer is notified, follow the procedures in Chapter 10, to notify the application.

16.2.2 Conditions on transferred permit

The transferred permit can have the same conditions as the previous permit or new conditions as considered appropriate. Any new conditions and comments on existing conditions should be included in the officer's report.



The application to transfer between sites is entered into CoCo (see CoCo User Guide).

16.3 Surrender of resource consent

16.3.1 RMA requirements

A resource consent holder may surrender the consent, wholly or partly, at any time if the activity or part of the activity has ceased (section 138 of the Act).

The consent holder should give written notice, either by completing a *Surrender of Permit Form* (F21), or by writing to advise GWRC that they no longer require the consent.

GWRC may refuse to accept the surrender of part of a consent on the grounds listed in section 138 of the Act, particularly if there would be adverse effects on the environment. Surrendering the consent does not relieve the consent holder of any obligations from when the consent was current (e.g. cleaning up a site).

The surrender of the permit becomes effective after GWRC sends the consent holder a notice of acceptance (usually a letter). The processing officer will send the notice of acceptance to the consent holder.



When a surrender is accepted, the processing officer should update the consent status field on CoCo and enter a surrender date reason for surrender. (Refer CoCo User Guide)

16.4 Lapse of resource consent

16.4.1 RMA requirements

If a resource consent is not exercised within five¹ years of the date of commencement of the consent (section 125 of the Act), or such other period as specified in the consent, it automatically lapses.

GWRC may extend the period by which a consent must be exercised if an application is made within **three months** of the expiry of the specified period, or a longer period if GWRC decides to use its powers under section 37 of the Act to extend the period. To extend the time within which a consent must be exercised, GWRC must be satisfied that:

- substantial progress or effort has been made toward giving effect to the consent; and
- the applicant has approval from every person who may be adversely affected by granting the extension (unless this is unreasonable); and
- the effect of the extension on the policies and objectives of any plan is minor.

The discretion to extend the period in which a consent must be exercised is delegated to the department manager.

The manager's decision can be objected to under section 357A of the Act.

16.4.2 Extending a lapse date

If a consent is likely not to be exercised within the five¹ year period, and the activity is to proceed, you should advise the consent holder that an extension should be sought. A recommendation is made to the department manager by the processing officer on whether the extension should be granted.

NB: If it is apparent that an activity may not commence for some time after the granting of a consent, the applicant should be advised to apply for a longer lapse period.



When a consent lapses, the consent status on CoCo must be updated and a lapse date entered (as well as a brief explanatory note). This is done by the processing officer.



Where possible, a consent holder should be informed prior to the consent lapsing. Once the consent has lapsed, a letter must be sent to the consent holder.

¹ The five year lapse period was introduced in the 2003 Amendment and applies retrospectively to consents granted prior to 1 August 2003 unless the consent contains a condition that states otherwise.

16.5 Cancellation of resource consents

16.5.1 RMA requirements

Where a consent (granted from 1 August 2003) has been exercised, but then is not exercised for a continuous period of **five years**, GWRC may cancel the consent (section 126 of the Act) unless the consent states otherwise.



Cancellation must be made by written notice served on the consent holder (section 126 of the Act). A resource advisor should contact (in writing) the consent holder before serving a cancellation notice to give them the opportunity to surrender the consent, if they are agreeable.

The consent holder may apply up to **three months** after the expiry of the five year period of inactivity (or within such time frame as agreed by GWRC) for suspension of the cancellation. GWRC must be satisfied that the applicant has obtained approval from every person who may be adversely affected by suspension of the cancellation (unless this is unreasonable), and that the effect of the suspension on any plan is minor.

The decision to cancel a resource consent or suspend the cancellation is delegated to the Environment Committee and the Rural Services and Wairarapa Committee. The decision can be objected to under section 357A of the Act.

If a consent needs to be cancelled you should prepare a report to the Environment Committee or Rural Services and Wairarapa Committee in the normal way. You should also send a copy of the report to the consent holder and invite them to attend the Committee meeting to speak to the committee (should they wish to).



Update CoCo as per the CoCo User Guide.

Chapter 17

Certificates of compliance

17.1 RMA requirements

Any person who carries out an activity, at a particular location, which is permitted by a plan or a proposed plan or can be carried out without a resource consent, can apply to GWRC for a Certificate of Compliance in respect of the activity (section 139 of the Act).

17.2 Procedures for certificates of compliance

As the processing of requests for Certificates of Compliance is chargeable to the applicant, the request should be set up with a number in the same way as consent numbers are set up and a job number (see section 7.2).



The procedures for processing a request for a Certificate of Compliance are similar to those for processing a non-notified resource consent application, except that no recommending report is required. Instead, a brief report, setting out how and why the proposed activity is a permitted, should be prepared. The issuing of the certificate is delegated to the departmental manager in Wellington and resource advisors in the Wairarapa.

Requests for Certificates of Compliance are allocated to staff in the same way as resource consent applications, i.e., by assigning them to the officer in the appropriate area of expertise. On receipt of a request, the resource advisor will check that sufficient information has been provided to determine whether the activity complies with the Plan or the relevant provisions of the Act which permit the activity.

If insufficient information is provided, the resource advisor should request further information, as the Certificate may only be issued for the activity and at the location for which it is requested. A certificate must be issued within **20 working days** of the request being made or the further information being supplied, whichever is the later.

The Certificate should be drafted by the resource advisor in the format described below (section 17.3). The Certificate should then be formatted by Word Processing and forwarded to the applicant with a covering letter and an invoice of costs (see Chapter 15).

17.3 Content of certificate of compliance

A Certificate of Compliance is deemed to be an appropriate resource consent issued subject to any conditions specified in the plan.

The Certificate follows a similar format as a resource consent certificate and must state that the particular proposal was permitted, or could be lawfully carried out without a resource consent, on the date of receipt of the request by GWRC (section 139(5) of the Act).

A Certificate of Compliance cannot be issued subject to conditions. The Courts have made it clear that the Certificate should not even repeat the conditions specified in the plan. The description of the proposal or activity and the location must be explicit in the certificate, i.e., you cannot just repeat the general description of the activity as it is described in the Plan.

The Environment Court has stated that a certificate of compliance cannot be issued for an activity which almost meets the criteria of the Plan, even if the shortfall has negligible effect. That is, GWRC does not have any discretion when issuing a certificate of compliance and the activity must comply fully, and in every respect.

17.4 Status of certificates of compliance

A number of the provisions of the Act relating to resource consents do not apply to Certificates of Compliance.

The certificate can only be exercised by the person to whom it is issued and is not transferable between persons or locations. The person requesting the Certificate can appeal only the decision not the issue of a certificate.

If a plan becomes operative in which the activity is no longer permitted, section 20(2) of the Act overrides a Certificate of Compliance and a resource consent must be obtained if the activity is to continue. The application for a resource consent must be made within six months of the plan becoming operational. The activity can then continue until the application is determined.

17.5 Monitoring charges

GWRC can set charges for monitoring Certificates of Compliance in the same manner as for resource consents. (Refer to the Resource Management Charging Policy)

Chapter 18

Consent guidelines and conditions

18.1 Consent duration

Resource Management Act 1991

Section 123 specifies that:

- Land use consents and coastal permits which contravene s13 can be granted for up to 35 years;
- Land use consents and coastal permits for reclamations can be granted for an unlimited duration;
- All other consent durations must not exceed 35 years; and
- Where no period is specified the default duration is 5 years.

Section 127 specifies that the duration of consent is the only consent condition that the consent holder cannot seek to be reviewed or cancelled.

Factors to consider when recommending a consent duration:

- Consistency with regional plans and policy;
- Proposed timeframe of consent activity;
- Adverse effects and environmental risk;
- Sensitivity of receiving environment;
- Adequacy of consent conditions to mitigate adverse effects;
- Potential for adverse effects after the activity has ceased;
- Adequacy of AEE;
- Changes in effects over time (are these likely to increase? Consider cumulative impacts);
- Consistency with other related consents;
- Overall consistency with RMA (sustainability, Part II):
- Acceptance by submitters and interested parties;
- Track record of applicant;
- Appropriateness of review clauses to deal with potential concerns; and
- Environmental sustainability and rights of other resource users and the community to be protected against adverse effects of an activity should be balanced against an applicant's request for a long consent term to provide security for their investment.
- NB the recommended consent duration should not exceed that period sought by the applicant.

Short term consent durations

Appropriate when:

- There is uncertainty surrounding the effects of an activity or concerns about long-term sustainability;
- Discharge permits which meet section 107(2) criteria;
- An upgrade of a treatment plant is required to ensure environmental standards met.

Officer's report

In many cases the applicant will request a duration of consent, especially if the proposed activity involves considerable investment. If the duration granted is less than requested, reasons must be given in the decision. If the applicant has not requested a duration of consent, you may suggest a duration for the consideration of the hearing. The duration proposed will reflect the individual circumstances of the consent. The reasons for the consent duration should include a consideration of sustainability and effects-based concerns.

Guidelines for consent durations

The following table can be used to provide general guidance (i.e., it does not bind you in any way):

Activity	Consent duration years	Reasons
Water takes <ul style="list-style-type: none"> • Groundwater • Surface water • Public water supply 	10 10 15	
Agricultural discharges <ul style="list-style-type: none"> • To land • To water 	5 – 15 (av 10) 2 – 10 (av 5)	A longer consent term may be recommended if there is a good compliance history. A shorter consent term is appropriate if the applicant has provided limited assessment of effects or if the discharge is to a sensitive or stressed catchment.
Coastal permits <ul style="list-style-type: none"> • Swing moorings • Boatsheds, jetty • Seawalls • Occupations (except by above structures) • Disturbance, works 	10 15 35 5 – 10 various	A reasonably short time frame recommended because we do not inspect swing moorings, except on renewal. Can become rundown or derelict. Therefore reassessment after 15 years to ensure on-going maintenance. Permanent structure. Consent includes long term maintenance. Occupation of CMA may be controversial and areas should not be excluded from public use for long periods. For the duration of the works, including an allowance for delays in completing the works – usually five years.

18.2 What to authorise by a single resource consent

Where more than one activity in a single proposal requires authorisation, use the following guidelines to determine what to authorise by a single resource consent document.

Where feasible, activities listed in each of the subsections in section 9 of the Act and which are likely to be exercised together, should be individually issued as a single resource consent and allocated a single consent number. Similarly, activities in each of sections 12, 13, 14 and 15 should be issued as a single consent.

If the environmental effects, and conditions required to mitigate these effects, are sufficiently different for a range of activities otherwise listed together in the subsections and subsections mentioned above, they should be issued as individual consents.

In the case of water permits, a single consent should be issued for each resource on the same property and which requires or is likely to require a different management strategy.

The wishes of the applicant should be taken into account when deciding what to authorise by a single resource consent.

If it is likely that parts of a water or discharge permit will be transferred in the short to medium-term, those parts should be issued as individual consents.

If a series of activities have similar monitoring requirements in terms of frequency, timing of visits and location of activities, they should be issued as a single resource consent.

Each resource consent will have a single consent number and will be issued as one document. For the purpose of these guidelines, one property may have several titles, but will be managed as one entity at one location.

18.3 Conditions

Section 108 of the Act sets out the types of matter that we can make the subject of a condition on a consent.

Best practice - Resource consent conditions should be consistent with the following criteria:

- (a) **Defensible** – i.e., reasonably related to the authorised activity and for a resource management act purpose;
- (b) **Intra vires** – i.e., within the powers of GWRC to impose;
- (c) **Certain** – i.e.; leaves minimal room for differing interpretations – both the consent holder and a compliance monitoring officer should be quite clear about what constitutes compliance;

- (d) **Enforceable** – i.e.; a condition must be readily able to be enforced or tested, e.g., a condition that is not practicable to enforce or which relies on compliance by a third party is unenforceable.

See MfE publication “Effective and Enforceable Consent Conditions”.

On occasions you will be required to draft a specific condition for a resource consent. You should try and find similar type conditions and adapt them to your situation. Non standard conditions should always be checked by a senior resource advisor, team leader or department manager.

18.4 Specific conditions

18.4.1 Bond conditions

The Act (as amended in 2003) introduces new and improved bond provisions. Section 108A provides that a bond may be given for the performance of any consent condition(s) you consider appropriate. We may now impose a bond for a period beyond the life of the resource consent to address situations where the adverse environmental effects of the activity may continue to occur beyond the term of the resource consent. In relation to long-term effects, the Act also provides some guidance on the type of conditions that you might impose a performance bond, which include:

- conditions relating to the alteration or removal of structures;
- conditions relating to remedial, restoration, or maintenance work;
- conditions providing for on-going monitoring of long-term effects.

If you are considering imposing a bond condition you should first discuss the merits of doing so with your team leader.

When you formulate a bond condition section 108(2)(b) directs you to describe the terms of that bond in the bond condition – you do not have cast the actual terms but you do need to have reasonably described them. The terms of the bond will obviously cover the value of the bond and its purpose. For example, if you were considering imposing a bond on a condition in respect of a landfill activity, you would make the sum explicit in the condition, and you might wish to state that the bond is drawn in terms to provide for the containment of contaminants necessitated as a result of the unforeseen closure of the landfill. There is also a “check list” of matters at section 108A(2) which you should consider; if any of those matters are relevant then you may provide for them in the terms of your bond condition.

The following conditions are examples of bond conditions imposed on our consents and should be of help to you in drafting your bond condition.

Example one

The consent holder shall prior to the exercise of this consent enter into and maintain a Performance Bond drawn in terms to be agreed to provide for the

containment, including covering of a suitable depth of any landfill material discharge in the exercise of this Consent, necessitated as a result of the unforeseen cessation of landfilling activity or closure of the landfill operation for any reason whatsoever. The Bond shall be in favour of the Wellington Regional Council and shall be to the value of \$10,000 in 1995 dollars to be available immediately on the commencement of discharge of a contaminant onto land.

Example two

Prior to the commencement of cable installation works at Titahi Bay the consent holder shall establish a performance bond or cash deposit for the sum of \$100,000 to ensure compliance with conditions W25A, W26, W27 and W31 of this consent and in particular to ensure that all adverse effects on the Fossil Forest Floor are avoided during cable installation works. The bond shall be in a form approved by the Wellington Regional Council and shall be on terms and conditions required by the Council. Unless the bond is a cash bond, the performance of all the conditions of the bond shall be guaranteed by a surety acceptable to the Wellington Regional Council. Upon completion of the installation works and all restoration and site remediation measures to the reasonable satisfaction of the Manager, Environmental Regulation, Wellington Regional Council, the bond will no longer be required and shall be released or repaid. The consent holder shall pay all costs associated with the bond, including the reasonable legal costs of the Wellington Regional Council such costs to be paid before the bond is released.

Please note that the second example contains the clause *the bond shall be in a form approved by the Wellington Regional Council and shall be on terms and conditions required by the Council*. This type of clause may now be *ultra vires* by virtue of the Amendment Act, which provides for certainty in requiring the condition to describe the terms of the bond.

Once you have drafted your bond condition you may wish to have it checked off by a lawyer.

18.4.2 Review conditions

Section 128 of the Act allows us to serve notice on a consent holder initiating a review of their consent condition(s). Where there is uncertainty about the potential effects of an activity, a review condition enables any adverse effects that arise at a later stage to be dealt with. Applicants require certainty so review conditions should only be used where the actual adverse effect is in question or the degree of effect cannot be foreseen, although the type of effect can be specified.

A valid review condition must specify:

- the time(s) when a review may be initiated;
- the purpose of the review; and
- ideally, what environment effect the review relates to.

Before imposing a review condition we need to consider if:

- the effect is unknown or uncertain;
- more information should have been requested; or
- the application should be declined because of the unknown or uncertain effects that might arise.

Example of a review condition

The Wellington Regional Council may review any or all of the conditions of this consent/permit by giving notice of its intention to do so pursuant to Section 128 of the Resource Management Act 1991, at any time within six months of the <first, second etc.> anniversaries of the date of commencement of this consent/permit for the following purposes:

- (a) *to deal with any adverse effects on the environment that may arise from the exercise of this consent/permit, and which are appropriate to deal with at a later stage and/or*
- (b) *specify purpose e.g.,*
 - *To review the adequacy of any plan(s) prepared for this consent/permit and/or monitoring requirement(s) so as to incorporate into the consent/permit any modification to any plan(s) or monitoring requirement(s) which may be necessary to deal with any adverse effects on the environment arising from the exercise of this consent/permit.*
 - *To alter the monitoring requirement(s) in light of the results obtained from any previous monitoring.*
 - *To require changes to monitoring frequency, methodology, determinands and reporting requirements.*
 - *To review, as a result of monitoring data, whether further emission controls are required.*

Chapter 19

Objections, appeals and inquiries

19.1 Objections to GWRC decisions and requirements

RMA provisions

Section 357 and 357A of the Act provides for an applicant to object to certain decisions or requirements of GWRC. In most cases the objection would be against a decision or requirement made under delegated authority. The following decisions or requirements may be objected to:

- any request for further information (section 92(1) of the Act);
- The decision to decline an application if further information under section 92 of the act is not provided;
- The decision to strike out a submission, or part of a submission, as vexatious or frivolous under section 41(C)(7) of the Act;
- any request to agree to a commissioning of a report (section 92(2)(b));
- the manager's decision on a non-notified resource consent application or review of conditions or a notified application/review where no submissions received or any submission received were withdrawn;
- the exercise of a resource consent while applying for a new consent (section 124 of the Act);
- the extension of the lapse period for a consent not yet exercised (section 125 of the Act);
- the cancellation of a consent not exercised for five years (section 126 of the Act);
- the decision on an application for a certificate of compliance (section 139 of the Act);
- the manager's decision on a non-notified application for a change or cancellation of consent conditions (section 127 of the Act);
- the decision not to consider a submission of a submitter who was required to attend a pre-hearing meeting and did not have a reasonable excuse for not attending; and
- the decision not to process an application of an applicant who was required to attend a pre-hearing meeting and did not have a reasonable excuse for not attending.

Section 357B of the Act allows objections to be made regarding the payment of additional charges (section 36(3) of the Act).

Objections



The objection must be made in writing to GWRC within **15 working days** of the decision or requirement being notified to the person objecting. The objection must set out the reasons for the objection.

Report to committee



Once an objection has been received, GWRC must consider the objection within 20 working days. This is done by reporting to the next Environment Committee or Rural Services and Wairarapa Committee meeting. Where it is not possible to meet the statutory time, timeframes will need to be formally extended under section 37 and 37A of the Act.

A report is prepared by a resource advisor setting out the reasons for the objection and the circumstances surrounding it. The objector must be given at least **5 working day's** notice of the committee meeting at which the objection will be considered. A resource advisor will ensure that this is done. NB: An objector has a right to be heard at the hearing.

You should also supply them with a copy of your officer's report at the time they are notified of the hearing (i.e. at least a week before the hearing)

Decision on an objection

The Committee will decide the objection or refer it to a hearing committee. In deciding an objection, the Committee can:

- dismiss the objection or uphold the objection wholly or partly; and
- in the case of an objection in respect of an additional charge, remit the whole or any part of the charge.



The committee must give their decision, *with reasons*, in writing to the objector and every person considered appropriate within 15 working days of making their decision. A resource advisor shall draft and send the letter and decision. The Committee's decision will be in the form of a *Minute Extract* that contains the reasons for GWRC's decision.



Update CoCo as per the CoCo User Guide.

19.2 Appeals and inquiries

RMA provisions

GWRC's decision on a resource consent application, review of consent conditions, or an objection under section 357 of the Act, may be appealed to the Environment Court.

In the case of a determination of a resource consent or review of conditions, the applicant or consent holder and any submitter may appeal. In the case of an appeal on an objection, the objector may appeal.

Lodgement of the appeal

The appeal must be lodged with the Environment Court and GWRC within **15 working days** of the notice of the decision being received by that person. The Notice of Appeal must also be served on the applicant or consent holder and all submitters to the application within five working days of the appeal being lodged with the Environment Court.

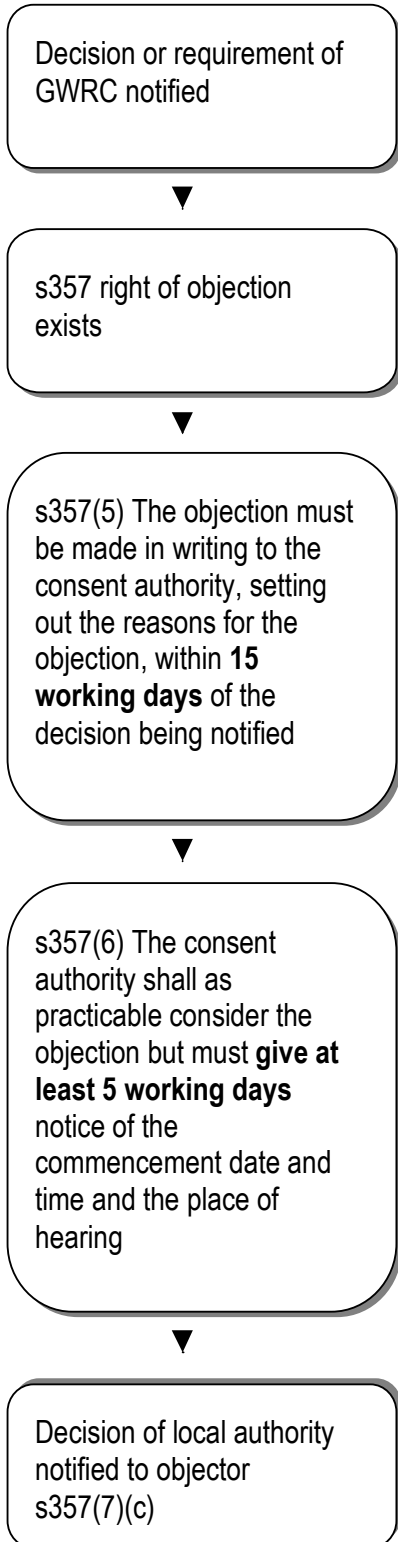
There is a brochure on appeals produced by the Ministry for the Environment which you can send to potential appellants.

Restricted coastal activities

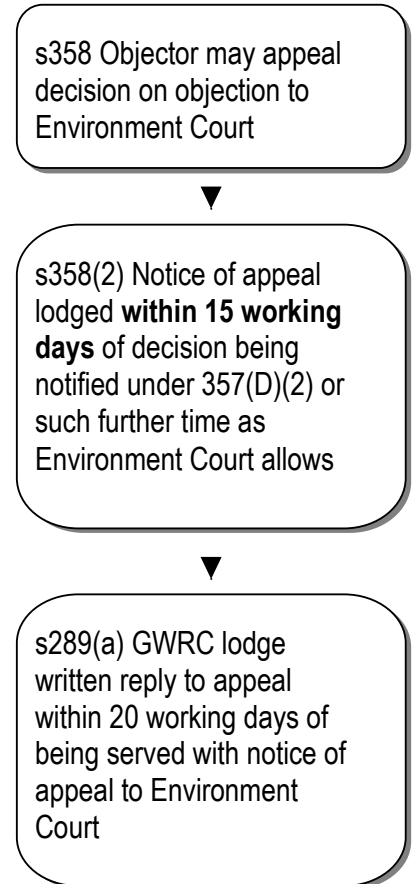
Where GWRC has made a recommendation to the Minister on a restricted coastal activity, the parties to the application may serve a Notice of Inquiry to the Environment Court on the recommendation. The procedures for inquiries are the same as for appeals.

Timelines for objections and appeals

Objections



Appeals



Becoming a party to appeal proceedings

Other people with an interest in the appeal proceedings “greater than the public generally” may get involved in the appeal process by giving notice to the Environment Court and to all parties within **30 working days** of the appeal being lodged.

Section 274 of the Act defines who may become a party to proceedings, how they must give their notice and what evidence they can present to the Environment Court.



Update CoCo as per the CoCo User Guide.

19.3 Replies to appeals and inquiries

When a Notice of Appeal or Inquiry is lodged against a GWRC decision or recommendation, GWRC must lodge a written reply with the Registrar of the Environment Court within 20 working days of being served with the Notice (section 289 of the Act). The reply must also be served on every other person who was served with a copy of the Notice.

The officer responsible for the application is responsible for discussing it with the departmental manager and team leader (see below). From there on the running of the appeal will become the responsibility of both the officer involved and either the departmental manager or team leader.

The first step for the officers dealing with the appeal is to engage a lawyer to act for GWRC. You will need to liaise closely with the lawyer over the case and keep a close eye on cost. (See below on engagement of counsel).



Update CoCo as per the CoCo User Guide.



You should also set up a new job code for the appeal as costs relating to an appeal cannot generally be recovered from an applicant or appellant.

19.4 Engaging counsel and/or consultants

Following the lodging of a Notice of Appeal or Inquiry, the officer responsible for the application or objection organises a meeting with the team leader and department manager to discuss the appeal. *The purpose of the meeting is to:*

- select suitable counsel to reply to the notice and to act for GWRC;
- identify appropriate GWRC staff to take part in the proceedings (this will normally be the Officer who has been previously involved with the application and either the departmental manager or team leader); and
- identify outside expertise and consultants to assist GWRC, if necessary.

Following the meeting, the officer will make direct contact with the selected counsel, consultants and/or GWRC staff to discuss the proposals agreed at the meeting.

Once suitable counsel and consultants have confirmed their availability, a brief is prepared for each, and forwarded to them with an order form for the work requested. The letter with the brief should ask them to provide an estimate of their fee for the engagement and the purchase order should set a maximum charge beyond which they must consult further with us. Be sure to keep a close eye on costs - at between \$100 and \$300 per hour, lawyers and consultant's bills don't take long to accumulate.

19.5 Consent orders

A consent order is a document (drafted by counsel) which sets out the terms of any agreement reached between the appellants, consent holder/applicant and the consent authority on the matters under appeal. The order usually relates to the amendment or addition of conditions of consent to satisfy the concerns of the parties involved.

Officers of GWRC do not necessarily have to be involved in the initial negotiations if the matters in dispute relate to conditions requiring the passage of information to another party.

Whatever the purpose of the negotiations, the processing officer should be aware of them and what is being discussed, and be available to attend meetings at which the possible amendments and additions are being discussed.

The Manager, Environmental Regulation has the delegated authority to sign off a consent order on behalf of the Council.

The processing officer has the discretion to decide whether to involve GWRC's lawyer in the negotiations. If the lawyer is not involved, s/he should be kept informed of the discussions taking place.

Once agreement in principle has been reached on the content of a consent order, the document should be put to GWRC's lawyer for consideration.



Following approval by the Chairperson, counsel is instructed to sign the consent order and present it to the Environment Court. The processing officer should maintain contact with the GWRC's lawyer to ensure that the consent order is forwarded to GWRC as soon as it is signed by the Environment Judge.



Update CoCo as per the CoCo User Guide.

19.6 Environment court

RMA provisions

Sections 247 to 308 of the Act (Part XI) cover the role of the Environment Court.

The above sections cover the procedures to be followed in the event of an appeal or inquiry being lodged. If the appeal or inquiry is not resolved by a consent order, a hearing will be held. The Environment Court sets fixture dates so that a number of hearings can be held in a block.

Notice of hearing date from court registrar

The notice of the Hearing Date for a fixture will be by way of notice from the Registrar. Consideration will be given at this time as to whether GWRC should seek an adjournment, although that is very unlikely as the judicial system is quite slow. The actual timing of the hearing of the appeal within the time allocated by the registrar will be decided at the *call-over* that proceeds the hearings. The GWRC's lawyer will attend this call over.

Preparing evidence

The setting of the date of the hearing usually gives insufficient time for the preparation of evidence. Preparation of evidence should commence well before the fixture list is received and certainly prior to the call over.

You should also liaise with the GWRC lawyer and any consultants to be used with regard to preparation of evidence. Advice should be sought from GWRC's lawyer as to the timing of the preparation of evidence.

Once you have prepared a draft of evidence you should provide it to the lawyer for their comments. The preparation of evidence is likely to require a number of meetings with the lawyer including conferences with other witnesses.

Exchange of evidence

Once the hearing date is set, evidence must be exchanged with other parties not less than five working days prior to the hearing (generally our lawyer will arrange this). Four copies of evidence must be available for members of the Environment Court. Additional copies for other parties should also be made available. Where evidence refers to statutory documents such as policy statements and plans copies should be made available for the Court members. All exhibits including photographs must be presented in a manageable form.

Court hearing

All hearings before the Environment Court are hearings *de novo*, i.e., all evidence is heard afresh. The procedure in front of the Court is usually as follows:

- the Court calls upon the person who applied for the consent to state their case and then adduce evidence in support;
- the body whose decision is appealed against presents its case;
- the parties who oppose the grant of consent or approval.

There may be instances when the Court will call on GWRC to outline the background circumstances to a case before calling the other parties who would normally commence.

On completion of the case it is normal for the Court to reserve their decision. At times a verbal decision may be given by the Environment Judge following completion. In some instances the Court may adjourn a case for the purpose of seeking additional information from any parties.



Update CoCo as per the CoCo User Guide.

Chapter 20 Compliance

20.1 Compliance procedures manual

Procedures relating to compliance are fully addressed in the Compliance Procedures Manual - this section is simply an outline of a few matters that may arise directly from the consent process.

20.2 Compliance and consent processing

In Wellington the person who processes the consent usually does the compliance but in the Wairarapa the staff doing compliance may differ from those who process consents.

The job manager for the application may need to liaise with other relevant staff during the following stages of processing a resource consent application:

- when reviewing the information supplied with the application, to review the completeness of the application, and to assess whether there are any existing compliance problems with the consent holder;
- when drafting conditions, to ensure that conditions set are enforceable, and for recommendations on suitable monitoring for the consent holder and GWRC; and
- when the consent is granted, to ensure that the relevant staff member has all the information needed for monitoring and is aware of the background to the consent.

20.3 Unconsented activities

If we or Pollution Control section discover an unconsented activity which requires a resource consent then the procedure outlined in Chapter 23 of this manual should be followed.

20.4 Consent supervision and monitoring charges

The consent supervision and monitoring charges are outlined in GWRC's *Resource Management Charging Policy* (February 1997). You must be familiar with that Policy. Two types of consent supervision and monitoring charges are made for granted consents:

- For small activities that do not require on-going supervision and monitoring, a single charge is made after the consent is granted. This charge covers one or several inspections of the activity. In general, land use consents for construction of structures, bores or stopbanks will have a one off charges as will most small diversions. The charge is sent out by the job manager (Wairarapa) or team leader (Wellington). If monitoring of the consent is being done by members of another GWRC department, the charge is determined by consultation between the job manager and the

appropriate officer from the other department. The charge reflects the time actually spent on consent supervision.

- For ongoing activities (including construction activities over a longer time frame) an annual charge is made. This charge is calculated from the charging policy on the basis of the size and scale of the operation and/or the annual monitoring requirements.

The standard letter which goes with a granted consent explains the supervision and monitoring charges (L3, L4 for non-notified consents and L22 for notified consents).

20.5 Updating CoCo

When turning an application into a resource consent on CoCo. You must enter:

- Inspection items
- Self monitoring
- One off requirements

These must be entered prior to passing the file to the Consents Administrator for CoCo QA.

Chapter 21 Database QA

21.1 CoCo database

Purpose is to ensure that information on the consent file matches the database record.

- (a) Each consent must be 'granted' on CoCo no more than **5 days** after the decision is notified.
- (b) Set up the 'compliance requirements' in the Resource Consents Module.
- (c) Place consent file to be QA'ed into the QA tray at the help desk.
- (d) The Administration Assistant is primarily responsible for QA but may require assistance from time to time from other consents staff.
- (e) The Administration Assistant or QA'er has **10** working days to QA the file using the grey *Database QA Checklist* (Standard Form #9).
- (f) Once the QA is complete, the QA'er puts one of the following notes on the Resource Consents Module:
 - QA complete or
 - QA changes to be made

This is all you need to enter – the note automatically records the date and person entering it.

Don't forget to complete the file copy of the green to show that the database QA has been carried out.

- (g) If no changes are to be made the QA'er returns the consent file to the filing cabinet.
- (h) If changes are to be made the QA'er returns the file to the processing officer. The processing officer makes changes within five working days (preferably the day they get it back) and amends the original QA note on the Resource Consents Module as follows:
 - QA complete and updated

You don't need to enter name and date changed as CoCo records this information automatically.

Chapter 22

Building consents

The Building Act 2004 is the primary legislation for building work and replaces the Building Act 1991. All city and district councils process building consent applications, undertake inspections and issue code compliance certificates for completed building work.

Amendments to the Building Act in 2005 mean that regional councils will become building consent authorities with responsibilities for consenting dams, approving dam classifications (their potential impacts) and approving dam safety assurance programmes.

GWRC no longer has any involvement in the process of issuing building consents for structures in the Coastal Marine Area.

Chapter 23

Retrospective resource consents

23.1 Purpose

The purpose of a retrospective consent is to legalise an activity that satisfies normal consent requirements, but for some reason does not have the necessary consent. Retrospective consents should only be issued where there are on-going effects that require to be avoided, remedied or mitigated through conditions of a resource consent. We also have the option of requiring the activity to cease or a structure to be removed and the area reinstated to its previous state. We need to determine the best way of minimising any adverse environmental effects. Appropriateness of cost recovery and/or enforcement needs to be considered.

23.2 Procedure

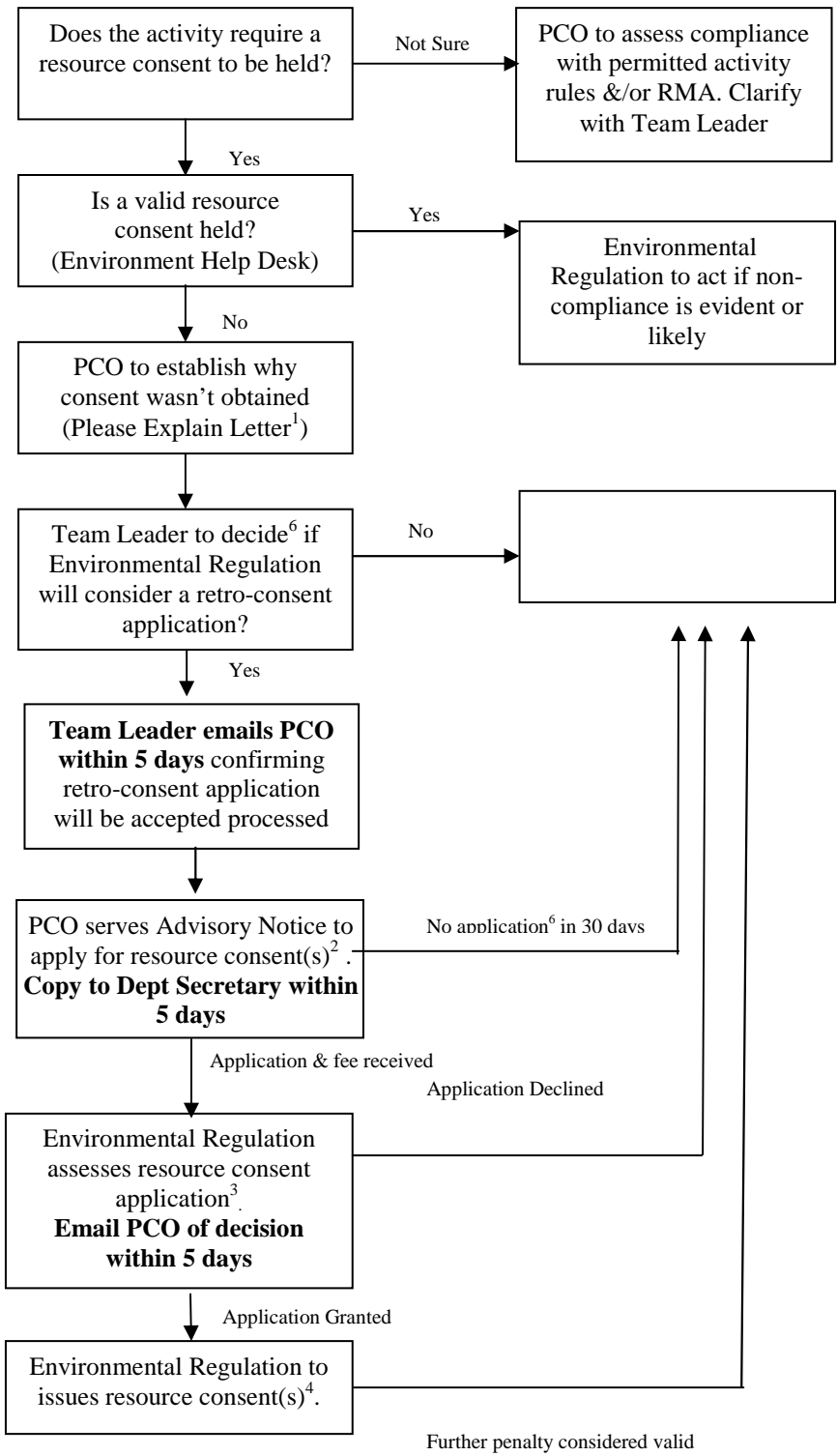


Figure 3: Retrospective resource consents

¹ Establish why a resource consent was not obtained for the activity/structure (via an *Advisory Notice* or *Please Explain* letter).

² Applicants must be informed that there is no guarantee of receiving a resource consent, and that consent conditions may require further work to remedy or mitigate adverse environmental effects. Note: the retrospective consent process does NOT eliminate our ability to take further enforcement action.

³ Applications should be assessed as per normal resource consent applications. For existing structures, the consent will not address construction requirements, but will address ongoing use and maintenance, and associated environmental effects.

⁴ Retrospective resource consents may have conditions that specify necessary improvements, modifications, or other steps necessary to remedy or mitigate adverse environmental effects.

⁵ A person cannot be abated to apply for a resource consent. An abatement notice can require that unsatisfactory structures are removed.

⁶ Team leader takes decision where activity is NOT connected with existing consent or an existing consent holder (within the vicinity of an existing consent). Otherwise responsibility is passed immediately to relevant monitoring officer.

Chapter 24

Emergency works

24.1 When can emergency works be carried out?

Emergency works (sections 330, 330A, 330B, 331 of the Act) may be carried out when, in the opinion of those listed below in 24.2, there is:

- An adverse effect on the environment which requires immediate preventative or remedial measures; or
- Any sudden event causing or likely to cause loss of life, injury, or serious damage to property.

Note the adverse effect or sudden event does not have to be foreseeable.

24.2 Who decides whether emergency works are needed?

- A person who has financial responsibility for public works¹ (such as Greater Wellington's Flood Protection Department).
- A local authority or consent authority who has jurisdiction under the Act for any natural and physical resource or area.
- A network utility operator² who has been approved as a requiring authority under section 167 of the Act for any project or work or network utility operation.

24.3 Exemptions for emergency works

Sections 9, 12, 13, 14 or 15 do not apply to emergency works to remove the cause of, or mitigate any actual or likely adverse effect of, the emergency. This exemption **only** applies where the emergency works are carried out by or on behalf of persons with financial responsibility for public works, local or consent authorities or network utility operators.

Section 330A of the Act requires the person or organisation carrying out the emergency works to advise the Environmental Regulation Department within 7 days of the works being carried out.

24.4 Resource consents for emergency works

Where an activity would otherwise contravene section(s) 9, 12, 13, 14 or 15 (but for Section 330) and the adverse effects of the emergency works continue, resource consent for the works must be applied for within 20 days of Environmental Regulation Department being advised of the works. Where the application is received within this timeframe, the activity may continue until the application and any appeals have been determined.

¹ Section 2 of the Act defines the meaning of "public works".

² Section 166 of the Act defines the meaning of "network utility operator".

24.5 Emergency works during a Civil Defence Emergency

Where a state of emergency has been declared under the Civil Defence Emergency Management Act 2002, sections 9, 12, 13, 14 and 15 of the Act do not apply to actions taken to remove the cause of, or mitigate any actual or adverse effect of the emergency. This exemption **only** applies where the actions are carried out by or on behalf of persons who have been conferred emergency powers under the Civil Defence Emergency Management Act

Subsequent notification and resource consent requirements are the same as for other emergency works under section 330A of the Act (see 24.4 above).

24.6 Works that do not meet the emergency threshold and are covered by a Regional Plan

Urgent works in a river or stream works

Rule 42 of the Regional Freshwater Plan provides for repair of bank protection works and the recontouring of the river or stream bed or any deposition on the bed by a local authority or network utility operator, which:

1. Is necessary to protect existing permanent dwellings, existing network utility structures, or existing flood mitigation structures from an imminent threat of erosion; and
2. Is undertaken and completed within 10 working days of a natural hazard event which results in erosion causing an imminent threat to any existing permanent dwelling, existing network utility structure, or existing flood mitigation structure.

This is a permitted activity provided it complies with conditions (1) to (7) of Rule 42.

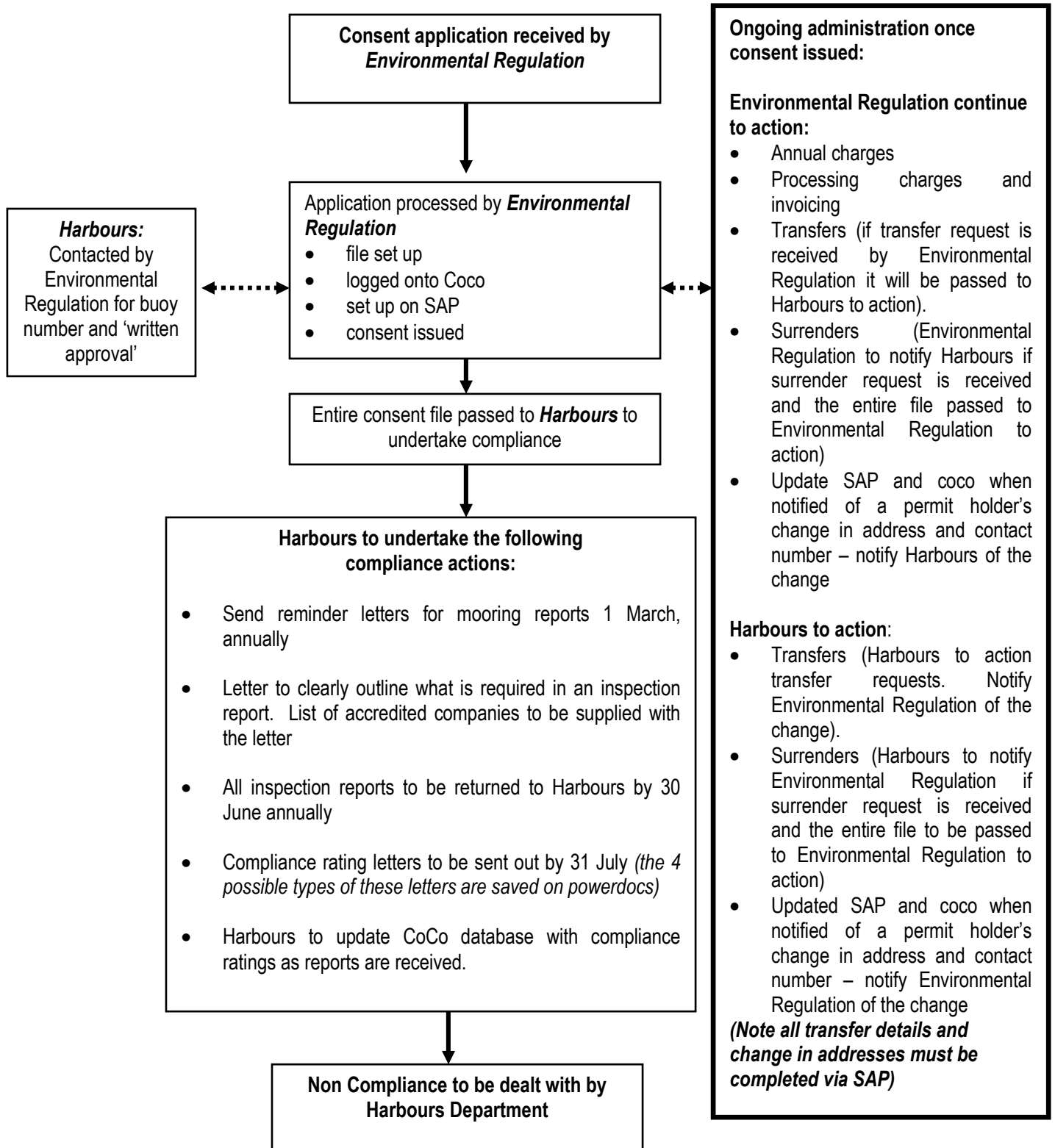
Clearance of flood debris from rivers and lakes

Rule 36 of the Regional Freshwater Plan allows the disturbance of any river or lake associated with clearing flood debris that poses a flood or erosion hazard for the purposes of protecting structures provided it complies with conditions (1) to (5) of Rule 36.

Flood debris is defined in the interpretation section of the Regional Freshwater Plan. It is important to note that flood debris does not include the normal fluvial build up of gravel.

Appendix A

Swing Moorings: processing and compliance protocols



Appendix B

Summary table - legal applicants/consent holder

Type of Applicant for Consent	Does the applicant have a separate legal personality?	Is the applicant a "person" under the Act?	Name(s) and contact details required on the application form.	Does the Council require the contact details and signature(s) of more than one individual on the application form?	If only one name and signature is required on an application form, whose signature should the Council accept on the application form?	If a consent is granted, what name(s) should appear on the consent decision and consent document?
1. Individual	Yes	Yes	Name of the applicant.	No	The applicant or their agent.	The name of the individual to whom the consent is granted.
2. Sole proprietor or Sole trader	Yes	Yes	Record actual name of the applicant, not his trading name.	No, an agent or person with authority can sign.	The applicant or their agent.	Name of the Sole Proprietor to whom the consent is granted and the name of the actual person who made the application.
3. Partnership	No	Yes	Names of the partners for whom consent is sought and the name of the actual person who made the application.	No, an agent or person with authority can sign.	The applicant or their agent.	The name of the partnership to who consent is granted plus the name of the partners who actually

						made the application.
4. Limited Liability Company (Ltd)	Yes	Yes	The name of the Company for whom consent is sought plus the name of the actual person who made the application.	No, an agent or person with authority can sign.	The applicant or their agent.	The name of the Company to whom the consent is granted.
5. Corporation and Body Corporate.	Yes	Yes.	The name of the Corporation or Body Corporate for whom consent is sought plus the name of the actual person who made the application. (A body corporate does not necessarily include the word "limited").	No, an agent or person with authority can sign.	The applicant or their agent.	The name of the Corporation or Body Corporate to whom the consent is granted.
6. Cooperative	Yes, but only if it is a properly formed Ltd Company.	Yes,	The name of the Cooperative for whom consent is sought plus the name of the actual person who made the application.	No, an agent or person with authority can sign.	The applicant or their agent.	The name of the Cooperative Company to whom the consent is granted.

7. Proprietary (Pty) – usually Australia	Yes	Yes, foreign equivalent of “Ltd”	As per 4	As per 4	As per 4	As per 4
8. Private or Family Trust	No	Yes	The name of the trustees for whom consent is sought plus the name of the actual person who made the application.	Yes, all those trustees who wish to be the consent holders.	N/A	The name of the trust to which consent is granted plus the names of the trustees who actually made the application .
9. Incorporated Trust (such as charitable trust boards)	Yes	Yes	The name of the Incorporated Trust for whom the consent is sought plus the name of the actual person who made the application.	No, an agent or person with authority can sign.	The applicant or their agent.	The name of the incorporated trust to whom the consent is granted.
10. Incorporated Society	Yes, as long as the Society name displays the letters “Inc” which is an abbreviation for Incorporation.	Yes	The name of the Incorporated Society for whom the consent is sought plus the name of the actual person who made the application.	No, an agent or person with authority can sign.	The applicant or their agent	The name of the Incorporated Society to whom the consent is granted.

11. Multiple applicants (2 or more individuals) (e.g. married couple)	No, they have no separate legal personality as a joint entity, only as individuals.	Yes	All full names.	No, an agent or person with authority can sign.	The applicant or their agent.	The names of the applicants.
12. Unincorporated Society	No	Yes	The name of the Unincorporated Society for whom the consent is sought plus the name of the actual persons who made the application.	Yes, legally you can only bind those members of the unincorporated society that make application for the resource consent.	The applicants or their agent.	The name of the Unincorporated Society to whom the consent is granted plus the name of the actual persons who made the application.
13. Committee	No. A committee is usually a subordinate of some parent body. The application should be made in the name of the parent body, not the committee.	Yes	The name of the parent body.	Yes, need contact details for the committee.	The applicants or their agent.	The name of the parent body.

14. Board of Trustees (Trust Board)	No, unless the trust board is constituted in law, such as the Maniapoto Maori Trust Board Act 1988, Charitable Trust Act, Education Act.	Yes	The name of the Trust Board for whom the consent is sought plus the name of the actual persons who made the application.	If the Board of Trustees has a separate legal personality than all you need is a signature of the applicant and or its agent. If the Board does not have a separate legal personality then you need the name of all the individuals who are making application on behalf of the trust board.	The applicants or their agent.	The name of the Trust Board to whom the consent is granted plus the name of the actual persons who made the application.
15. Institute	Maybe. You will need to find out if there is a statute setting up the body.	Yes	The name of the Institute for whom the consent is sought plus the name of the actual persons who made the application.	If the Institute has a separate legal personality than all you need is a signature of the applicant and or its agent. If it does not have a separate legal personality then you need the name of all the individuals who are making application on behalf of the institute.	The applicants or their agent.	The name of the Institute to whom the consent is granted plus the name of the actual persons who made the application.
16. Association	No	As per 12	As per 12	As per 12	As per 12	As per 12
17. Agency	No	As per 12	As per 12	As per 12	As per 12	As per 12

18. Government Department	Yes	No, application should be made in the name of the head of the department (e.g. Director General of XX, or Chief Executive Officer).	The name of the Head of Department for whom the consent is sought plus the name of the actual person who made the application.	No, an agent or person with authority can sign.	Head of Department, Officer with delegated authority or an Agent.	The name of the Head of Department to whom the consent is granted.
19. Government Ministry	Yes	No, application should be made by the appropriate Minister.	As per 18	As per 18	As per 18	As per 18
20. Federation –	Maybe. There must be inquiry	As per 12	As per 12	As per 12	As per 12	As per 12
21. University	Yes	Yes	The name of the University for whom the consent is sought plus the name of the actual person who made the application.	No, an agent or person with authority can sign.	Any one with authority	The name of the University to whom the consent is granted.

22. Friends of		As per 12	As per 12	As per 12	As per 12	As per 12
23. Estate of	No. The relevant persons are executors and trustees of the estate	No	As per 8	As per 8	As per 8	As per 8