

**SECTION 24A RMA INVESTIGATION OF THE CONSENT
PROCESSING PERFORMANCE OF THE
FAR NORTH DISTRICT COUNCIL**

**An investigation of the Council's performance
in the 2007/08 year**

Prepared for

Minister for the Environment

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SUMMARY

In the 2007/08 year, the Far North District Council (FNDC) processed only 37% of resource consent applications within the statutory timelines prescribed in the Resource Management Act (RMA). As a result of this poor performance the Minister for the Environment instructed the Ministry for the Environment (MfE) to investigate the reasons for this under the provisions of section 24A of the RMA.

MfE contracted two experienced, independent consultants to carry out this investigation. In November and December 2009 the consultants visited the FNDC for three days, during which time they spoke with 16 staff from all levels of the organisation, the Mayor and 11 representatives of external agencies, including iwi and local planning consultants. Telephone interviews were conducted with staff from the Northland Regional Council (NRC), and two councilors. A detailed overview of the current consents tracking and management systems was also provided, and a substantial number of files were reviewed.

This part of the report summarises their findings and recommendations. The full report must be read to understand the more detailed investigation and the reasons for the recommendations made.

Several factors led to the poor performance in the 2007/08 year (which followed poor performance in the 2005/06 (approximately 56% processed within statutory timeframes) and 2006/07 (approximately 44% processed within statutory timeframes) years) including:

- A large number (609) of resource consent applications were processed, and quite a number of these were for large scale developments, driven particularly by the high demand for coastal subdivision at that time.
- Consent processing is demand driven. FNDC did not have the staff resources to meet that demand at that time. Additional staff were sought, but very little response was received. Engineering advice was also stretched to deal with 285 subdivision applications during the 2007/08 year, as site visits generally have to be undertaken. Although staff were working long hours, they were largely reacting to applicants with no opportunity for any proactive interventions.
- Some decision making processes were poor. An example is that too many incomplete applications were accepted, rather than returned to applicants using the provisions of section 88 of the RMA. This led to further information being requested under section 92 for almost half the applications received (295 out of 609), which is a very high percentage.
- The use of consultants for overload processing was very poorly managed, and most of the consultants used performed poorly, despite promises made that they could handle the additional workload. In blunt terms FNDC dumped consents on consultants and they dumped back often poor draft decisions, which staff then had to review.
- There was a two month delay for hearings to be scheduled.
- The District Plan was not operative during the 2007/08 period. It became largely operative in August 2008 and fully operative in September 2009. During the 2007/08 period both the transitional and proposed District Plans had to be taken account of in decision making on resource consents. Further, the now operative District Plan has many flaws.
- The resources required by FNDC to meet the new building accreditation requirements of the Building Act strained staff resources and diverted senior managers' focus from consent processing timeframes.

It is pleasing to report that most of these failings have now been remedied. This is attributed to two main reasons – a much reduced consent workload (a backlog of about 200 applications has been reduced to around 40 current applications), and much improved internal processes. An example of the latter is much improved use of section 88, with decisions having to be made by the Team Leader within three days of applications being lodged. The consent tracking system – a computer programme known as “Pathways” developed specifically for local authority consents – is used very well as a management and reporting tool. Staff are also very supportive of one another, with a strong “team performance” ethic. However recruitment and retention remain an issue for the Council, with a general experience gap between a handful of long serving senior staff and other, mostly inexperienced (but often very capable) staff with relatively little experience. The employment of local residents as “student planners” on a planning scholarship programme is one commendable initiative to overcome some of these staffing issues.

Some of these improvements trace back to the 2007 local body election, where a new Mayor, prominent local businessman Wayne Brown, and his “Value for Ratepayers” team took a dominant role on the Council. A new CEO and a very experienced General Manager of Environmental Management have been employed, and a restructure has brought the consents and planning teams together. These staff have moved to a new building in Kerikeri, which is “closer to the action”, and management tools such as key performance indicators have been introduced for all staff. Since March 2009, when staff put a “line in the sand”, all consent applications have been processed within statutory timelines. All these staff changes are seen as positive, many strongly so.

External agencies were generally complementary about the consents staff of FNDC. The staff were considered to be very approachable and responsive to calls, e-mails and the like. Despite political tension there is a very good working relationship between the staff of the FNDC and the NRC, with close co-operation on many consents matters. Some NRC functions have been transferred to FNDC to allow their expeditious implementation. This arrangement generally works in a satisfactory way. Iwi representatives spoken to considered that the staff tried hard to understand their concerns, but did express strong concerns about their people’s inability to respond within statutory timeframes as some more contentious consent applications need to be taken back to whānau or hapū groups. This same concern is voiced by many iwi around the country.

The Council believed that there was a two year moratorium on private plan changes once the District Plan became operative. There was also a previous reluctance to accept that the District Plan is seriously flawed, and that it needs to be changed to remedy some of these flaws. The Council also diverted resources to prepare non-statutory policy, and rejected two private plan changes (a decision which was overturned by the Environment Court).

The Council had a policy of applicants being able to “select” independent commissioners from a list approved by the Council; this policy direction has been changed.

There remain areas of improvement that FNDC should implement, some of which are now underway. First, there is presently an opportunity for the Council consents team to prepare for the next upswing in consent applications. Matters that need to be addressed in the near future include:

- Further service level agreements should be agreed with other sections of the Council, and the current agreement with the service delivery departments updated to reflect the new structure of the Council.
- Some possible flexibility in staff levels when demand increases. For example, more engineering officers should be trained to report on consent applications.

- Consent processes should be much better documented in a manual that is regularly updated. This allows new staff members and external consultants to readily understand the Council's processes.
- Review existing Contracts for employing external consultants for consent overload processing, with set and enforceable performance measures. We note that such new contracts have been drafted by FNDC, but none are presently agreed.
- When we undertook the review, delegations were out of date and often had no clear accountability for what decisions are made at what levels. New delegations have now been agreed by Council.

Secondly, the District Plan is "work in progress", and remedying its flaws should be a priority. Work is already underway on notifying Council initiated plan changes to improve the definitions in the Plan, and deal with amenity issues in the District (which have been identified during the preparation of the Kerikeri-Waipapa Structure Plan). In the longer term, a review should be undertaken of what other significant changes are necessary to improve environmental outcomes.

Thirdly, the Council has a quasi-judicial role that must be exercised with much care to avoid any hint of impropriety. It must have transparent processes that ensure there can be no perception of undue political influence in processing consents, or in some planning decisions. One way to help achieve this is that all resource consent applications made by individuals or companies associated with any staff, councillors or their families should be processed by independent consultants. This will eliminate any perception of improper political interference in the processing of those consents.

Given the Council's reasons for rejecting the two recent private plan applications were overturned by the Environment Court, it is essential that those plan changes to be heard and decided entirely by independent commissioners. This is necessary to avoid any allegation that the Council has prejudged those applications. While we understand that this is already the Council's practice, it is not what occurred when the original applications for private changes were considered.

Finally, it is noted that this investigation occurred well after the poor performance took place, and as noted above, many of its causes have already been remedied. There should be a process where councils can signal to MfE that they need help "right now", so proactive steps can be put in place to overcome problems before councils become overwhelmed by day to day demands of processing resource consent applications.

1 INTRODUCTION

This report is the result of the Minister for the Environment's decision to authorise an investigation into the performance of the Far North District Council's performance under section 24A of the Resource Management Act 1991 (RMA).

The terms of reference for the investigation are set out in Appendix 1.

In essence, the purpose of the investigation was to look at the consent processing period of the 2007/08 financial year. During that time the Council processed 37% of resource consents within the statutory time frames¹ as recorded in the 2007/08 Ministry for the Environment Resource Management Survey. We were charged with looking at what steps the Council has taken since that time to improve its processes and advise on any additional improvements that we thought were required.

Our task was limited to investigating the Council's processes under the Resource Management Act 1991 and not any other legislation. In saying this, we did look broadly across the Council's planning and consents functions under the RMA, as these are very closely interlinked.

Prior to visiting the Council, we requested that a number of documents be sent to us for review. These included:

- Staff Structure diagram – 2007/2008 and now
- Consent Processing Manual
- RMA delegations – 2007/2008
- Section 36 Fees and Cost Recovery Policy
- A few recent agendas to Council's Planning/Hearing Committee
- List of Councillors and what Committees they are on
- A few recent larger hearing decisions
- List of recent major consent applications
- Copies of Service Level Agreements between Council departments and external agencies such as Iwi and the Regional Council
- List of Independent Commissioners used for hearings.

We conducted our on-site investigation from the 23 – 25 November 2009, during which time we were based in Kerikeri. We conducted further investigations by phone after that date. A list of the persons we spoke to is included in Appendix 2.

We thank the councillors and staff of the FNDC who we spoke to, and the other parties also, for their co-operation during the course of this review. Our questions were answered frankly and we think honestly, and there was no pressure put on staff to give particular answers to us. We are particularly grateful for the assistance provided by Nicole Wooster of the FNDC staff, and for the tireless assistance and support we received from staff of the Ministry for the Environment.

¹ Non-notified application without a hearing 20 working days; non-notified application with a hearing 40 working days; notified application without a hearing 50 working days; notified application with a hearing 70 working days.

2 THE 2007/08 YEAR

The results of the FNDC performance on processing resource consents is set out in the Council's completed RMA Survey of Local Authorities 2007/2008. We have included a copy of the completed survey in Appendix 3.

In summary the main results were:

Number of consent applications processed to decision stage	609
Number of land use consent applications	323
Number of subdivision consent applications	285
Number of discharge permit applications	1
Number of applications that required requests for further information	295
Percentage of applications processed within statutory timeframes	37%
Number of applications that received time frame extensions under section 37	219

We concluded that in the 2007/08 reporting period investigated, FNDC honestly reported their poor performance in meeting consents processing timelines. FNDC uses the "Pathways" computer programme for the management and tracking of resource consent applications. This is one of several databases used by councils around the country to track and report on consent applications, and is one that when well managed can produce very good information. We were provided with computer generated results of the consent application decisions during the 2007/08 period that was used to populate the survey questionnaire.

We have addressed the factors that contributed to poor performance under the headings below:

2.1 Number of Applications

The number of resource consents processed during the 2007/08 period was 609. For the period 2008/09 the number was 584 and for the four month period July 09 to October 2009 the number was 170.

These numbers however only tell part of the story. Not only have the numbers of consents being processed declined since the 2007/08 year, the number of complex or contentious consents being sought is much less. For example, we were told that the number of applications for larger coastal sub-divisions had dropped to virtually zero during the past 12 months.

Comment

Given the number of staff working in the resource consents team at the time, this is considered a high workload. The application numbers were driven by a boom economy with a strong demand for new coastal development. Consent processing is demand driven, and in simple terms, demand much exceeded the supply of resources to meet it.

2.2 The District Plan

During part of the period being reviewed, both the operative and proposed District Plans had to be taken account of when assessing applications. The District Plan became very largely operative in October 2007, and fully operative in September 2009.

Comment

During our investigation, many of the people we interviewed, both internal and external, drew our attention to issues with the current District Plan that they considered were contributing to consenting complexity and therefore delays. At the end of the 2007/08 period the FNDC planning team met for three days looking at how to fix the District Plan. Management told us that it is now a priority to remedy the flaws in the Plan, but staff and some external parties interviewed were disappointed that no action had been taken to implement the outcomes of this workshop.

So far there have been no Council initiated changes to the Plan to address those matters raised. However, there are two present work streams that will lead to Council initiated changes to remedy some of these problems. The first of these covers matters such as definitions, and this is expected to be notified within a few months. The second takes some of the findings from the Kerikeri-Waipapa Structure Plan review and we understand will apply these to the district as a whole, particularly in regard to amenity issues. It is expected to be notified later in 2010.

2.3 Staff Resources

During the 2007/08 period the Council had four qualified planners, four planning assistants and effectively one engineer working in the resource consents team. Three experienced staff left during the 2007/08 year, which was a time when there was a high external demand for experienced planners. In addition, a number of those officers who remained with the Council were relatively inexperienced.

The Council at the time suffered a lack of staff resources to handle the consents workload. In particular, there was (and remains) an “experience gap” between the manager and team leader, and most of the other staff, who are quite junior and inexperienced. FNDC tried to recruit additional consents staff at this time, but had little (indeed often no) suitable response.

With the large number of subdivision applications (285 or 47%), engineering advice was stretched. This, combined with often long travelling distances for site visits, added to delays.

We believe that at this time there was a “siege mentality” among staff, many of whom were working long hours. We were told that there were more applications coming into the Council each week than were being processed and decision letters sent out. The staff were responding to whichever applicant was calling up to complain about where their consent was at.

2.4 Acceptance of Applications and Use of Section 92

In the 2007/08 period the Council issued 295 requests for further information under section 92. This practice was used in place of using section 88 (returning incomplete applications) as it was seen as being more customer friendly. This resulted in the large number of section 92 requests at the time, and has also created a legacy of “suspended” or “on hold” applications that are still on the Council’s books (approximately 135 applications currently on “suspend” or “on hold”).

Comment

In our view, many of the applications accepted by the Council in the 2007/08 year were substandard and should have been returned to the applicant using the provisions of section 88. While it is good to have a customer friendly focus, this should not result in an administrative burden of large numbers of applications on hold, when there was (at that time) no real means under the Act to deal with them.

The Council has not analysed the requests for further information to see who they are sent to and what the requests are for. Such an analysis could identify any common issues which could then be addressed.

One officer would accept and allocate applications to staff for processing and a separate officer would review, sign off and issue the consents. Hence, there was no one with an overview of how the system was working. Applications received were sent to the Northern (Kaitaia north) or Southern (Kerikeri / Kaikohe) teams for processing. Most of the consents being processed were in the southern area which resulted in a heavy workload. The resources were not evenly spread or managed relative to the workload.

The Council has the “Pathways” computer system for the management of resource consent processing. This system was installed in 2005. It was not used to track applications as to how many days they had progressed through the process. In addition, we were advised that many of the templates for reports and consents on the system were not up to date.

2.5 Use of section 37

In some of the interviews we conducted, we were advised that section 37 (doubling of time frames) was used infrequently. On analysis of the FNDC response to the MfE biennial survey, section 37 was used 209 times in the 2007/08 period.

Comment

We have been unable to ascertain the effect of the use of the section 37 relative to compliance with the statutory time frames. Nonetheless, we consider this level of use to be excessive and with an in-house view that its use was infrequent, reinforces our view that there was a failure to step back and look at the big picture. We note that for the 2008/09 period, section 37 was used only 73 times and that it has not been used after June 09, a noted improvement.

2.6 Communication with Applicants/Agents

Several internal and external people we interviewed commented on the poor communication between Council and applicants during 2007/08. The reason for this appears to be that Council staff and consultants processing applications would only contact applicants by way of written communication in the form of letters or facsimiles. There was a reluctance to phone or email requests for further information or clarification, no matter how trivial.

Comment

This may have been due to inexperienced staff and a desire to document everything. It is not an applicant friendly approach, and has now clearly been remedied.

2.7 Hearings

We were advised that in the 2007/08 period there was a two month delay for the scheduling of hearings, evidently due to a lack of availability of politicians to sit on hearings panels. The Council now uses independent commissioners, so there are no such long delays.

2.8 Poor Use of Consultants

FNDC has struggled to recruit and retain staff, particularly more experienced planners. During the “boom” they would advertise but would often get no suitable applicants. They had no choice but to use consultants for overload consent processing. In the 2007/08 period some 200 applications were processed by consultants. This number reduced to about 84 in the 2008/09 period. This has now reduced to almost zero.

Using consultants to fill the gaps during the “boom” was poorly managed throughout. We were told that applications would be collected up and couriered to consultants with no explanation or covering letter. We were also told that while senior consultants in some firms had made promises to FNDC about what they could deliver, they substantially failed to do so, handing work to junior staff and carrying out inadequate peer reviews of what those junior staff did.

Comment

We consider FNDC were naïve to believe that the use of consultants would “fix the problems”. The consultants did not meet their promises and used very junior staff who did not understand the FNDC District Plan. There was no consistency in the decisions being prepared and they required review and correcting by FNDC staff which added further to delays and costs. In our view, FNDC did not contract the consultants adequately, and the consultants did not generally perform. In blunt terms, FNDC dumped parcels of consents on them, and they dumped often poor and expensive draft decisions back on FNDC. (We saw one application processed by consultants for a simple boundary change that cost almost \$3,000, although this was eventually discounted by over a third).

FNDC also attempted to use engineering consultants, both large and small, to assist on the engineering aspects of land use and subdivision applications. While there were similar issues to this raised above, another factor was finding consultants with suitable levels of experience that were not already engaged by applicants. We were also made aware of consultants undertaking peer review work for the Council one week and filing applications the next.

3 WHAT HAS HAPPENED SINCE 2007/08

There have been major changes in the Council since the poor performance in meeting statutory timeframes in the 2007/08 financial year.

The first of these was that a new Mayor and Council, most of whom stood on a ticket of “Value for Ratepayers” was elected in the October 2007 local body elections. The new Mayor made it very clear that the performance of council staff in meeting consents timelines had to improve. We discuss this further in Section 7 of this report.

The new council has had a strong impact on the organisation. The former CEO Clive Manly resigned and was replaced temporarily by the former CEO of Manukau City Council, Colin Dale. About a year ago the Council employed a new CEO (Dave Edmunds), who in turn has employed a new General Manager of Environmental Management, Fran Mikulicic (who has experience in similar management roles at Waitakere, North Shore and Rodney Councils). In another significant change the Environmental Management staff, which now includes consents and policy, have been relocated from Kaikohe to a new building in Kerikeri. This is because most of the development in the district is occurring along the east coast and particularly in and around Kerikeri, so this is “closer to the action”. It also provided staff with a more desirable location to work, although there are downsides, particularly as files have to be ordered from Kaikohe and some staff who regularly interact with consents team members remain based in Kaikohe. We consider the current restructure, which brings policy and consents together in one management group, to be very well founded, and it should have long-term benefits for overall performance.

Performance in meeting consents timelines has improved greatly since 2007/08. We think the main reason for this is a major reduction in workload (the backlog has reduced from about 200 to 40 current applications), as the former “boom”, particularly for coastal development, has been replaced by a credit squeeze and a recession. However, an important secondary reason is that the management of the consents process by staff has much improved.

Some of the improvement in performance has also been driven through the new management of the Council. An example is the use of Key Performance Indicators (KPI's) setting staff performance targets. The team leader of the consents section for instance has a KPI that requires him to make all decisions on whether an application is “complete” (section 88) within three working days of that application being received. Currently about 20% of applications are returned as incomplete. Complete applications are then assigned to individual staff for processing. The “Pathways” computer system is then used to track each application, with weekly reporting to the team leader to make sure that timelines are being met. We also considered that all the staff we spoke to had clearly defined roles and responsibilities, and it was also very clear what the expectations of them were.

As part of this process of performance improvement, consents staff put a “line in the sand” as of 1 March 2009 with the target of 100% of consent applications being processed within statutory timeframes. To date they have met this target fully.

When interviewing staff we were impressed by the support that they showed for one another. In one on one interviews using open questions there is always the opportunity to criticise others. It was very noticeable that there was almost no criticism of other staff members – rather the commonly used expression was that “we have a good team here” and what we saw certainly backed that up. We were also very impressed by the competence of most staff interviewed; several we would view as “stars in the making”.

We did hear evidence of some anxiety among staff, but while we were in the Far North a staff restructure was taking place in the Environmental Management Department, and that seemed to be the main cause of any anxiety expressed to us. We understand that as a result of the restructure some staff with present management responsibilities will be moved into senior planning or technical positions, but that the council strongly desires to retain its experienced staff.

4 THE CURRENT SITUATION

A generally robust consent process is now in place. A good example is the much greater use of section 88 (returning incomplete applications) versus section 92 (further information requests after the application has been accepted). The consent computer tracking system is sophisticated, and we were impressed by how well staff use it, and how well it is now used as a management and reporting tool. As noted above, since March 2009, 100% of applications have been processed within timelines.

Like most councils, FNDC has a large number (152 lodged pre-2009) of old “suspended” applications where section 92 further information requests have been made and not responded to, or where the applicant has requested that the application be placed on hold. The Council has a current project to reduce this backlog, as most of these proposals are likely to have been abandoned. There will be the opportunity under section 161 of the Resource Management (Streamlining and Simplifying) Act 2009 for FNDC to address these applications after 1 October 2010. However, if any of these applications are re-initiated then the statutory processing times are likely to be adversely affected.

With the downturn in overall application numbers, the Council has taken the opportunity to second two of the resource consent staff to the Policy section on a part time basis. We consider this an excellent initiative in providing practical implementation skills into the Policy section and providing professional development and a widening skill base for staff. We were also very impressed by the Council's planning scholarship programme which is aimed at supporting local people to complete their planning degrees and providing them with work experience during the holiday period as student planners. One example was a mature Māori woman from Kaitaia who had recently graduated from Auckland University.

Additional matters that have been addressed include:

- There is an in house peer review of internal reports and decisions prior to sign off.
- KPI's are in place for consent staff.
- Restructuring of department to include both resource consents and district plan policy within the one team and in the one location.
- At least one service level agreement is in place with other sections of the Council.²
- One staff member with an overview of the acceptance and issuance of consents.

² This was a memorandum of understanding between the Roads and Stormwater, and Water, Wastewater and Refuse Departments, and the Development Consents Department dated May 2008. We were also shown a draft memorandum between the landscape architects in the Community Services Department and the Regulatory and Customer Services Department.

The council has a list of independent commissioners. While only one is a current councillor, many others are former councillors and have no professional qualifications. While these commissioners are often sought by applicants because they are “cheaper”, their slowness and/or inability to write decisions is a cost the applicant bears. It also puts an extra burden on the staff or consultants who have to substantially prepare the decision.

There is one full time engineering officer and one half time from the utilities department who prepare reports on subdivision applications for the consents department. This area of expertise is one where the Council needs to be in a stronger position before there are any changes in demand.

The Council had prepared a draft Quality Manual for resource consent processing. This manual has not been taken to the next stage of implementation testing. Apart from this there are template letters and reports in the Pathways system, but nothing as formal as an approved resource consent manual.

FNDC receive few section 357 objections. It is understood that this is in part due to the \$500 lodgment fee. As with most councils, applicants still object to the fees charged by Council for processing applications. FNDC have a separate “fee review” process for addressing such objections. This involves Council staff reviewing the file and charges, and making a decision on whether or not to waive the fee in part or in whole.

Comment

There is presently an opportunity for the Council Consents team to prepare for the next upswing in consent applications. We consider this to be critically important. Matters that need to be addressed in the near future include:

- Although FNDC has recently drafted new contracts for the engagement of consultants, they need to be agreed with external consultants for consents related work.
- Further service level agreements should be agreed with other sections of the Council, and the current agreement with the service delivery departments updated to reflect the new structure of the Council.
- Some possible flexibility in staff levels when demand increases. For example, more engineering officers should be trained to report on consent applications.
- Existing delegations are out of date and often have no clear accountability for what decisions are made at what levels. They must be reviewed – which we understand is all but completed.
- Consent processes should be much better documented in a manual that is regularly updated. This allows new staff members and external consultants to readily understand the Council’s processes.

We also consider that the occasional independent survey of consents “customers” (e.g. applicants, frequent submitters) can provide invaluable feedback for further performance improvement.

In regard to section 357 objection we are uncertain about the legality of charging applicants for objections. It is at least in our view not good practice, particularly when any objection might be because of an error in the condition on the part of Council. We note that the Quality Planning Website states:

“While it may be possible for councils to charge for processing objections under s357, 357A, and 357B, the situation in relation to fixing charges for objections is not clear. Councils that intend to fix charges for objections should seek legal advice on the legality of those charges.”

The fee review process appears to be a duplication of what would normally be conducted under section 357. We also note that the section 357 process provides appeal rights which do not appear to be provided under the fee review process.

5 THE DISTRICT PLAN

Although much of the District Plan has been beyond challenge since 2007, it only became fully operative in September 2009. It has a chequered history, with an early version that was notified in 1996 being withdrawn in 1998 following strong community reaction to proposals about significant natural areas. The current proposed plan was then notified in 2000.

The Council has concentrated on getting the Plan to the operative stage.

Both staff and external agents indicated that the Plan has many flaws. It is too liberal in the large rural production zone, and some commercial zones. On the other hand, some rules are viewed as being pedantic. It was suggested to us that there are many relatively minor changes that would substantially improve the clarity and effectiveness of the Plan, while reducing the need for often very minor consent applications. An example cited is that of changing some definitions to improve clarity and certainty.

A review of the District Plan in relation to the definitions issue is expected to be notified within a few months.

There is one current Council initiated plan change (renewable energy and energy efficiency) at the further submission stage. We understand that much of this particular Plan Change development work has been carried out by consultants. In late 2008, the Council rejected two recent private plan change requests, but this decision was overturned by the Environment Court, and these are also now at the further submission stage. This is further discussed as a case study below.

The Council has also prepared the Kerikeri Waipapa Structure Plan, which is a non statutory document. This Structure Plan was recently reviewed and some of the findings from this review are to be implemented, a Council initiated change to the District Plan. This will particularly address issues such as amenity and is expected to be notified later in 2010.

The Environmental Policy and Forward Planning team in charge of the District Plan up until the restructure in December 2009, was also responsible for Hapū and Iwi Management Plans, biodiversity, climate change and genetically modified organisms policy. Under the new structure being implemented, the District Plan aspects of the policy team are being brought into the same team as resource consents.

Comment

In our view, the Council had either not understood the link between the District Plan and the need to apply for resource consents, and/or directed resources into other policy areas that do not contribute to the effectiveness and efficiency of the District Plan as a contributor to the 2007/08 poor performance.

Futhermore, the Council had promulgated what is effectively resource management policy without following a statutory planning process. Two areas that we were made aware of were on-site wastewater treatment “policy” and parking in Kerikeri.³ We understand these policies were requested specifically by the Council. They have no statutory standing, and could well be considered a poor use of relatively scarce resources. We think these resources would be better directed towards remedying some of the flaws in the current District Plan. We note that this is now occurring through work towards two Council initiated plan changes. In the longer term a review of what more significant changes are necessary to improve environmental outcomes should be undertaken and then implemented.

5.1 Case Study – Private Plan Changes Sought

The current District Plan was promulgated in April 2000. It replaced a proposed plan notified in October 1996 and withdrawn in October 1998. The Plan is now operative.

In April 2008, the Council received two applications for private plan changes from companies known as Kerikeri Falls and Borneo Investments. These were complementary requests that sought to establish a special zone on the outskirts of Kerikeri to establish a facility to provide a range of living, care and recreational facilities for people in or approaching retirement. For instance, the Kerikeri Falls proposal is for the development of 233 residential units and a 40 bed care facility on a 16.9ha site. The current zoning of the area is “rural living”.

Once these applications were received, the Council made two resolutions. The first of these, made in May 2008, effectively amounted to a moratorium on private plan changes. It said that as “*a matter of course in relation to private plan change requests*” Council would reject all such requests “*during the first two years in which the District Plan was operational*”. In June the Council apparently thought better of this, and revoked this resolution, resolving instead to consider private plan change requests as per the statutory requirements of the Act on a case by case basis.⁴

The Council considered these two applications in October 2008. Two reports from independent consultants recommended that the private plan changes be accepted, subject to some caveats regarding matters such as roading. Despite this, the staff recommendation was that the requests be rejected on several grounds under Clause 25 of the First Schedule of the Act. It was inferred to us that this recommendation was made under political instruction, but we have no evidence to substantiate this. Two councillors declared an interest and took no part in discussions on these resolutions, and another councillor abstained from voting on both resolutions.

This decision was appealed to the Environment Court. The Court’s decision, which was released on 17 August 2009, overturned the Council’s decision and directed that it proceed to consider these two private changes. In doing so, the Court noted that the appellants had also applied for various consents, in particular for regional consents such as the discharges of wastewater and stormwater, and for earthworks.

³ Parking in Kerikeri is being changed by road format changes that are the work of roading rather than planning staff, so they do not affect planning capacity.

⁴ We are bemused why two such contradictory resolutions should be passed within a month of one another, but we are not clear about the reasons for this.

The Court's decision was quite critical of the Council, noting particularly that the Council did not have an unfettered power to reject a plan change within two years of the Plan becoming operative. It also implicitly criticised the Council's assertion that resources to process such applications were in short supply, noting that the major burden of costs will fall upon the proponents, and that consultants can be hired to carry out the work.

Comment

The Council has a quasi-judicial role in determining matters such as private plan applications. It must handle these with full regard to what the law directs, and not prejudge applications simply because they do not like them. In this case, the Council rejected the applications on grounds that were more related to the substantive issues than to the matters of law that it had to consider.

Two councillors stood aside from this decision, and all but one other voted in favour of these two resolutions. As their decision was based largely on considerations that relate to the full applications, these variations should now be put in front of independent commissioners to hear and decide. We understand that this will be the case.

6 VIEWS OF OTHER PARTIES

As part of carrying out this review we canvassed the views of several external parties or their agents. These included five staff members of the Northland Regional Council (NRC) who were interviewed by phone; a representative of the Department of Conservation (DoC); two local planning consultants (one of whom had acted as an agent of the Historic Places Trust); and two representatives of local iwi. Subsequent phone conversations were held with another staff member of NRC, and a staff member of the Ministry of Health.⁵ A list of the people interviewed is included in Appendix 2.

All the people interviewed were generally complementary about the responsiveness of FNDC to their views, and the approachability and helpfulness of their staff. They were rated as the most responsive of the local authorities in the Northland region. The main points of note included:

- While there is political tension between FNDC and NRC, at a staff level the working relationship is very good and constructive.
- NRC have transferred some functions (e.g. smaller on-site wastewater discharges) to FNDC; better monitoring and reporting on the associated protocol is necessary. We discuss this further below
- Joint hearing processes with NRC are satisfactory.
- FNDC is very good at providing timely and appropriate information about consents received.
- FNDC staff were generally praised for being approachable and willing to discuss matters openly, respond to e-mails, return phone calls and the like.
- FNDC were praised for listening to these parties and including appropriate conditions of consent.
- Iwi expressed strong concern about their inability to respond within statutory timeframes because of the need to "take the material back to the people". This is a widespread concern among Maori throughout much of the country. We discuss this further below.

⁵ These were Riann Elliott of NRC and John Harding of MoH. Both of these conversations were about community sewage disposal in the Far North rather than the consents processing performance of FNDC.

- These parties were generally complementary about the quality of the decisions made – the Council includes appropriate conditions to meet their concerns.
- Some commissioners registered with the Council are not regarded as competent. This is also further discussed below.

6.1 The Relationship between FNDC and NRC

6.1.1 The Political Relationship

As with any relationship between a regional and territorial authority good collaboration is necessary on some matters – such as land use consents for earthworks where both councils can exercise controls but for different reasons, and in the preparation of regional and district plans. Inevitable also are tensions – district councils are major resource users in any region in relation to matters such as discharges from community wastewater schemes and landfills, and the taking of water for community supply – and the regional council is the regulatory authority for discharges to the environment and water takes and use.

There is political tension between FNDC and NRC. There are several reasons for this, the primary one being that FNDC do not regard NRC decisions on wastewater discharges to be affordable. We understand FNDC believes that it should be a unitary authority, which would exercise both regional and district council functions under sections 30 and 31 of the RMA.

While it is beyond the scope of this investigation to examine the merits or otherwise of such a governance arrangement in the Far North, we note that the FNDC has much work to do to get its own house in order. Examples include improvements to the District Plan and the provision of infrastructure, particularly as it relates to wastewater treatment and disposal. In the latter instance we note that some Far North communities have only rudimentary wastewater treatment, with well documented problems such as the need for some oyster farms to close due to the risk of contamination, primarily from septic tank discharges. The Council has made 23 applications to the Ministry of Health fund known as the Sanitary Works Subsidy Scheme that provides funds towards the costs of sewage treatment for relatively poor and small communities. Of these applications however, only two are active (these are for Russell and Kawakawa), five are provisional and 16 have been put on hold by FNDC because of funding constraints and the stringent consent conditions being put on the plants.⁶

Until matters such as these are resolved, the question of whether the Council should exercise unitary functions should not be explored actively. It would not be appropriate for instance for FNDC to make decisions on standards for wastewater discharges to the coastal environment. It would also need to prepare plans for its regional functions, but at present the District Plan needs substantive work. Matters such as this should be the District Council's priority.

⁶ NRC acknowledge some (but certainly not all) of the standards that have been imposed on wastewater discharges may be too stringent. Those where NRC consider current standards cannot be relaxed are most commonly directly to coastal embayments. Ministry of Health expressed concern that even with 90% subsidy being offered, FNDC assert some high priority schemes are not affordable. FNDC have embarked on a project to take a long-term overview of expenditure on wastewater discharges with input from parties such as the Ministry's of Health and Fisheries, NRC, and the District Health Board.

6.1.2 Staff Working Relationship

It is important that there is a strong working relationship between staff of a regional council and those of the constituent territorial authority. This is because their functions are strongly complementary, and they must work together well in developing policies and plans, in administering and deciding resource consent applications, in monitoring and enforcement and many other areas (one example being emergency management).

At a staff level the working relationship between the NRC and FNDC is a very good one. Two typical comments made were:

- *“We have a good or very good working relationship with staff of the FNDC – it depends a little on the individual you are working with. There is a lot of goodwill. Sometimes however we are dealing with consultants and they lack the necessary detailed knowledge.”*
- *“FNDC have a good consents database and we are impressed with the rapid turnaround of the transferred functions. But the real test will come when the pressure comes back on.”*

It was also noted that staff were keen to have NRC input into initiatives such as the Kerikeri-Waipapa Structure Plan. Some concerns were raised however about previously slow turnaround times when FNDC was under pressure such as in 2007/08, but it was noted that this had much improved.

6.1.3 Transfer of Functions

In December 2001, NRC transferred a number of its functions, duties and powers to the FNDC using the provisions of section 33 of the RMA. These included land use consents for earthworks for earth dams, and for on-site discharges of human sewage from private buildings of up to 3 cubic metres per day. Another suite of transferred powers were for functions in or that straddle the coastal marine area, such as private jetties and boat ramps and minor structures, and functions such as noise control, sale of liquor, and the removal of dead stock and abandoned vehicles. In some cases this transfer involved processing, administration, monitoring and enforcement activities; in others just monitoring and enforcement. In some cases the agreement was that FNDC could recover their reasonable costs from applicants or exacerbators; in others that they could invoice NRC for costs.

This is one of the more significant transfers of functions that we are aware of under the RMA. NRC staff considered it was generally exercised satisfactorily, but there were some concerns and better reporting on the protocol by FNDC was considered necessary. It is beyond our brief to explore this further.

6.1.4 Joint Applications and Hearings

Many developments in the district require resource consent from both the FNDC and the NRC. These do on occasions require joint hearings. This is where a development requires consents from both the regional and territorial authority, and a hearing is necessary.

NRC has a comprehensive agreement with the three territorial authorities in the region as to how such consent and hearing processes will be managed. This has been in place since December 2000. Officers interviewed from both Councils said these processes generally ran well, which reflects the good working relationship between officials of the two Councils.

6.2 The Views of Iwi

Māori make up about half the population of the Far North District. Two representatives of local iwi were interviewed as part of the review. Both expressed some exasperation at what they saw as the overlapping roles of NRC and FNDC.

Much of what the FNDC did was commended by those interviewed. They both had a good working relationship with Council staff, with iwi liaison staff particularly praised, albeit within the limits imposed by their employer. Typical comments were that iwi liaison staff had “*a really good grip of what Māori do*” and that they “*are sympathetic to the people*”. The Council was also complemented for building iwi capacity.

Iwi representatives believed they received all the relevant information from the Council about consents that had been lodged. Consents staff were considered to try hard to understand the issues raised by Māori, although their “*downfall was a lack of understanding of our cultural issues*” and that “*they cannot think outside the square*”. Some frustration was expressed that consents staff were too keen to resort to “*the rule book*” and that iwi representatives felt “*palmed off at times*”, but that staff were willing to come out to a neutral venue to hear iwi views. It was noted that although the Council did at times use Māori commissioners (“*but the applicant gets too much choice*”), no elected councillors are Māori (although eight community board members are Māori).

Iwi are developing lists of sites of significance to them, including wāhi tapu and urupā. While many are listed in the current District Plan, others are not and iwi are keen to get these recognised. Some frustration was expressed about how the Plan tends to use cadastral boundaries which sites of significance do not follow. An accidental discovery protocol is in place.

Both men expressed concern that the statutory timeframes in the Act hindered iwi input into resource consent applications. This is because the more significant applications have to be passed on to potentially affected hapū or whānau, and they need time to meet and consider the applications. They are only given 10 days to do so; this is far too little with three months often considered necessary. While this caused some frustration, it was commented that there is goodwill on both sides, and it was acknowledged that the Council faces a dilemma in dealing with Māori because there is no “one stop shop” like there is with other agencies such as DoC and Historic Places Trust.

Both men considered that consultation should be encouraged by applicants prior to applications being lodged. Te Rarawa has been working with Council officers to develop such a protocol, but this appears to have become stalled.

Comment

The generally good working relationship between FNDC and iwi is commendable. It is clear that within the limitations of the RMA and its own, largely non-Māori consents staff, the council tries hard to respond to the concerns of its Maori communities.

The concerns of iwi about statutory timeframes imposed by the RMA, and their inability to have affected people respond within those timeframes, is one commonly heard around the country. It is a failing in the Act from their point of view. As consultation prior to an application being lodged is not obligatory, there is no means for compelling applicants to consult – the council can only resort to moral suasion, which often does not work.

6.3 Hearing Commissioners

One of the first moves of this new council was to abolish the hearings committee and move to independent commissioners to overcome longstanding concerns over political bias and interference. All but one councilor has agreed to this.

As noted elsewhere the council has an “approved” list of independent commissioners who can be appointed to hear and decide consent applications. They fall into two broad categories – professionals such as planners or technically qualified consultants who understand well the RMA and its many ramifications, and other local people who have successfully completed the Ministry for the Environment “Making Good Decisions” course and who are accordingly “registered hearing commissioners”.

Strong concerns were expressed to us that some of the latter group were not competent to hear anything but straightforward applications as they lacked the understanding of the Act, policies and plans and case law. Some could not write their own decisions; rather they relied on staff or consultants to do so.

Comment

The concern about the lack of competence of many registered hearing commissioners – typically councillors or ex-councillors is one we have heard widely around the country. It is causing problems for many councils, and is one, that in our view, MfE should be addressing with some haste.

7 THE POLITICAL ENVIRONMENT

7.1 The Council

The Council comprises a Mayor elected at large from the District, and nine elected members from three wards – northern which has three elected members, eastern which has four and western which has two members. There are also three community boards with the same ward boundaries but smaller groupings within the boards. By way of example, the northern ward is divided into three community board divisions – North Cape, Kaitaia and Doubtless Bay.

7.2 The 2007 Election

There were major changes to the Council at the last local body election in 2007. A new Mayor, Wayne Brown, was elected by a large majority, as were six new councillors, five of whom stood on Mr Brown’s platform of “Value for Ratepayers”. Like all local authorities with which we are familiar the Council has strong political divisions, but Wayne Brown and his allies often have the strength of numbers in Council decision making.

Wayne Brown is a registered engineer who lives at Mangonui near Doubtless Bay. He has diverse business interests in horticulture, planning, environmental auditing, building and property development in Kaitaia, Kerikeri, Omapere, Mangonui and Ahipara. He is presently the chairman of the Board of the State Owned Enterprise Transpower, and has also chaired the Auckland District Health Board, Northland Health, Tarawhiti Health (in Gisborne), Vector Limited and the Land Transport Safety Authority among other roles. He is very well known and successful businessman with a high profile and is a strong personality with strong views.

Another new councillor elected in 2007, Steve McNally, also has property development interests.

In his initial speech to Council, Wayne Brown made a strong speech, with comments such as the following pertinent to this review:

*“I have been given the privilege of leading council as Mayor, following the election which saw voters deliver a **BIG MANDATE FOR CHANGE AT FNDC**”.*

“This is all about a massive cultural change in behaviour and attitude of staff. Our staff are to listen, ring back, help ratepayers not hinder, look for solutions not arguments, never threaten, insult, infuriate or demonise ratepayers. Picking on the poor and disabled is unacceptable, we must learn to apologise for stupid behaviour or errors and there have been plenty, to seek approvals not hearings, to be honest about delays, include mandatory stopped time, avoid lawyers and use plain English and te Reo where possible to inject some of the special flavour of our beloved district.”

“These are sensible changes but will require genuine change from staff and this will take leadership and responsibility. Those who embrace this change will note a sudden lift in spirits and public approval. Those who cannot or will not make the change will need to re-examine their involvement. Management will be measured to ensure that the directions and outputs required by council are met. This approach will lift the performance and appeal of FNDC as a place to work for those with skill and confidence. Current staff will be encouraged and trained to respond to the wishes of ratepayers who seek prosperous and attractive growth for all the people of our Fabulous Far North.”

As discussed previously the new Council has had a strong impact on the organisation. New managers have been employed, and there is now a much stronger focus on individual and team performance in the Council.

We consider many of these changes to be positive. They have put in place staff and processes which have much improved the Council’s performance in processing resource consent applications within statutory timeframes. This is certainly not to say that the job is completed as there are still areas for improvement, which we have detailed already. Before the new Council was elected, a Planning and Hearing Committee heard and decided most notified resource consent applications that needed to be heard. Independent commissioners heard other, more complex applications. Since the election the council has dis-established all committees bar one – Finance and Audit – and all resource consent applications that have to be heard are put before independent commissioners.⁷

⁷ One councillor – Laurie Byers – remains as an “independent” commissioner.

7.3 Matters Raised During the Review

Disquiet was expressed to us about a number of matters relating to the new Council. These included:

- A perception that some councillors had exerted undue influence on consents staff to provide quick and favourable outcomes for resource consent (and also building consent) processes associated with their own business interests.
- A perception that two proposed private plan changes were rejected by Council because at least in part they were contrary to the business interests of some councillors.⁸
- At the Mayor's insistence "policy" has or is being prepared on matters such as on-site wastewater and parking in Kerikeri.

Up until late in 2009, the Council had a policy that consent applicants could "select" from a list of independent commissioners which they wished to hear and decide their applications. We understood this to be a political initiative based on the notion that that the applicant was paying, so they should choose. This policy has now been overturned.

Comment

We found no evidence to substantiate any of these allegations. What we can say is that consents staff spoken to did consider they were under some political pressure in relation to consents processing, but that they did not consider this as out of the ordinary, or as something which placed them in a particularly difficult situation.

But perception is all important here. The Council has a quasi-judicial role that must be exercised with great care to avoid any hint of impropriety. The Council must have transparent processes that ensure there can be no perception of undue political influence in processing consents, or in some planning decisions. This is particularly important given the wide business interests of some councillors and the Mayor, including building and development, and allegations of some conflict of interest.

Two of the steps we originally suggested to overcome this perception have already been undertaken. Applicants can no longer indicate who they may "prefer" as hearing commissioners, and independent commissioners will be used to hear and decide the two private plan change applications before the Council.

One other step that should be taken is that all resource consent applications made by individuals or companies associated with any councillors, staff or their families should be processed by independent consultants. This will eliminate any perception of improper political interference in the processing of those consents. It is not appropriate for staff to feel under political pressure when processing such applications.

We think it would also be wise that any future applications for private plan changes be considered independently, and that the Council follow that independent advice – which it failed to do in the case of Kerikeri Falls and Borneo Investments.

⁸ As noted elsewhere, these decisions have been overturned by the Environment Court.

8 CONCLUSIONS

As is evident from the substance of this report, FNDC has made major improvements in the processing of resource consents since the 2007/08 year. But much remains to be done, not only in trying to future proof consents performance, but also in improving the District Plan and eliminating any perception of improper political influence in quasi-judicial decision making by the Council.

This investigation has taken place well “after the event”. Presently the MfE survey of local authorities in meeting consents processing timelines takes place every two years, and is typically not reported until some 9-12 months after the latest local authority reporting year. It is evaluating historical rather than current performance. While we consider that this review will be helpful to FNDC to improve its future performance, when it really needed help was two or three years ago. We consider that MfE should evaluate whether there are means whereby councils could signal they need help “right now”, and what could be done to provide that.

Finally, we note that the emphasis of this review has been on efficiency, that is measuring the quantitative performance of FNDC in meeting consents processing timeframes. But what is more critically important in the longer term is effectiveness – that is the quality of consents decisions in meeting the purpose and principles of the RMA. That we think is a challenge that MfE now needs to be working towards measuring.

Appendix 1: Terms of Reference for Review of FNDC's Performance

1. Purpose of Investigation

- 1.1. The purpose of this investigation is to identify what has led to the Council's poor performance record over the 07/08 period and identify possible solutions.

2. Scope of the Investigation

- 2.1. The investigation will cover the following factors :
 - Applications: guidance for applicants and use of section 92
 - Analysis of consent processing systems and practices
 - Council staffing and use of resources
 - Administrative systems and tools
 - Internal audits and monitoring
 - Customer relationships and feedback
 - Other contextual matters.

3. Methodology for Investigation

- 3.1. Investigations will be undertaken by an external consultant with RMA resource consent experience, with project management and oversight being provided by the Monitoring Compliance and Review Team at the Ministry for the Environment. Project support will be provided by the Resource Management Practice Team.
- 3.2. The consultant and an analyst from the Monitoring, Compliance and Review Team will spend three days with each Council undertaking discussion with Council staff and assessing databases, file information and Council administrative systems. Council staff that will need to be available will include the Consent Manager, several Consent Officers, the Planning Administrator (if applicable) and Customer Services staff (if applicable). The discussion will be based around a set of investigation questions (Attachment 1). These questions, along with further information on the documents to be assembled prior to the investigation, will be pre-circulated to the Councils.

4. Reporting

- 4.1. The findings (including any recommendations) from the investigations will form the basis of a draft report to be discussed with the Council before being finalised and presented to the Minister for the Environment. A copy of each final report will be provided to the relevant Council concerned.
- 4.2. These investigations may result in recommendations being made to each Council on ways to improve their performance under section 24A(b) of the Resource Management Act. This may include further monitoring of the council's performance.

5. Term of Investigation

- 5.1. The investigations are planned to take place over a three day period in November 2009.
- 5.2. The findings from the investigation will be reported back to the Minister for the Environment by 11 December 2009.
- 5.3. Any final recommendations on ways to improve Council performance will be reported to the councils following the report back to the Minister on council performance.

Appendix 2: Persons/Parties Interviewed

Persons/Parties Interviewed in Person

- Wayne Brown – Mayor
- David Edmunds- Chief Executive Officer
- Fran Mikulicic – General Manager Environmental Management
- Pat Killalea – Resource Consents Manager
- Murray McDonald – Principal Planner – Resource Consents
- Wayne Smith – Resource Consents Team Leader
- Greg Wilson – Senior Planner – Resource Consents
- Lynley Newport – Senior Planner – Resource Consents
- Jessica Phillips – Resource Planner – Resource Consents
- Tammy Wooster – Resource Planner – Resource Consents
- Theresa Burkhardt – Graduate Planner – Resource Consents
- Rex Shand – Development Engineer
- Lou-Ann Ballantyne – Environmental Policy Manager
- Raewyn Symthe – Hearings Administrator
- Mana Blackburn – Support Officer
- Giselle Timperley – Statistical Information & Support Officer
- Les Smith – Quality Manager
- Andrew Riddell – Department of Conservation
- Leonard Dissanayake – LMD Planning Consultancy
- Jeff Kemp – Bay of Islands Planning Ltd
- Rehia Hugh Rihari – Te Runanga O Ngati
- Abe Witana – Te Runanga O Te Rarawa

Persons/Parties Interviewed by Telephone

- Dave Roke, Vaughan Cooper, Alan Richard, Geoff Heaps and Stuart Savill, Northland Regional Council
- Councillor Tom Baker
- Councillor Sally McCauley



Ministry for the
Environment
Manatū Mō Te Taiao

RMA SURVEY OF LOCAL AUTHORITIES 2007/2008

Council name: Far North District Council

This copy of the survey questionnaire allows you to see what information was provided to the Ministry for the Environment by your council in the online survey. This questionnaire is for the financial year 1 July 2007 to 30 June 2008.

Please check the information in this survey for accuracy. It will be used as the basis for the Ministry for the Environment's published report.

Please email josh.fyfe@mfe.govt.nz to confirm your satisfaction with these responses or to make corrections **by 3 October 2008**.

Instructions

When completing the survey please use the following approach:

- Unless otherwise stated, please only consider resource consents as defined by **section 87** of the RMA. However please also include deemed permits if they were issued during the 2007/08 financial year.
- Include resource consent applications that have been processed through to a decision during the 2007/2008 financial year.
- Include resource consent applications lodged before the 2007/2008 financial year if the decisions to grant or decline them were made within the 2007/2008 financial year.
- If there are multiple resource consents in the one application form, then count the number of resource consents included in that form.

The survey excludes resource consent applications withdrawn before a decision was made (even if that application involved staff time before it was withdrawn).

Definitions of terms and an explanation of the survey questions are provided on pages 16-19 of this document to help you complete the questionnaire.

Survey questionnaire

1. Resource Consent Processing Statistics

Resource consents processed to a decision in 2007/2008

1.1 How many resource consent applications (as defined in **section 87** of the RMA) were processed through to a decision by your local authority in the 2007/2008 financial year? 609

Changes in resource consent conditions

1.2 How many resource consent applications processed to a decision by your local authority were -initiated changes in resource consent conditions (as defined under **section 127** of the RMA) in the 2007/2008 financial year? 55

1.3 How many resource consent applications processed to a decision by your local authority were -changes in resource consent conditions (as defined under **section 128** of the RMA) in the 2007/2008 financial year? 0

Certificates of compliance

1.4 How many certificates of compliance were issued by your local authority under **section 139** of the RMA in the 2007/2008 financial year? 11

Resource consents declined

1.5 How many resource consent applications processed to a decision were declined by your local authority in the 2007/2008 financial year? 3

Type of resource consent

1.6 Complete the following table with information about how many of each type of resource consent were processed to a decision by your local authority in the 2007/2008 financial year.

Type of Resource Consent	Subdivision	Land Use	Coastal	Water	Discharge	Total
Number of <u>notified</u> consents processed	19	6	0	0	0	25
Number of <u>limited notification</u> consents processed	8	5	0	0	0	13
Number of <u>non-notified</u> consents processed	258	312	0	0	1	571
Total consents Processed	285	323	0	0	1	609

Resource consents by activity status

- 1.7 Complete the following table with information about the activity status of resource consents that were processed to a decision by your local authority in the 2007/2008 financial year.

Activity Status	Controlled	Discretionary	Restricted Discretionary	Non-complying	Total
Number of consents processed	47	267	207	88	609

Further information requests

- | | | |
|-----|--|-----|
| 1.8 | How many resource consents processed in the 2007/2008 financial year required written requests for further information under section 92(1) of the RMA? | 295 |
| 1.9 | How many resource consents processed in the 2007/2008 financial year required your local authority to commission a report for further information under section 92(2) of the RMA? | 0 |

Pre-hearing meetings

- | | | |
|------|---|---|
| 1.10 | For how many notified and limited notified resource consents processed in the 2007/2008 financial year was there a pre-hearing meeting held under section 99 of the RMA? | 4 |
| 1.11 | How many pre-hearing meetings resulted in issues being resolved so that a hearing was unnecessary? | 2 |

Type of resource consent decisions

- | | | |
|--------|--|-----|
| 1.12 | How many resource consents processed during the 2007/2008 financial year were decisions made by: | |
| 1.12.1 | Local authority officers (under delegated authority) | 584 |
| 1.12.2 | Independent commissioners (not including councillors or community board members acting as commissioners) | 10 |
| 1.12.3 | Current councillors and/or community boards acting as commissioners | 0 |
| 1.12.4 | Councillor hearings panel/committee | 15 |
| 1.12.5 | Other (e.g. mixed panel of councillors/commissioners) | 0 |
| | Total | 609 |

Objections and Appeals made by the applicant on resource consent decisions

- | | | |
|------|---|---|
| 1.13 | How many objections under section 357 of the RMA were received by your local authority in relation to a resource consent decision during the 2007/2008 financial year? | 9 |
| 1.14 | For those objections under section 357 of the RMA in 1.13 above, how many were appealed to the Environment Court under section 358 of the RMA? | 0 |

Appeals to the Environment Court on resource consent decisions

1.15 How many resource consent decisions made by your local authority in the 2007/2008 financial year were **appealed under section 120?**

10

2. Time

Statutory timeframes for notified consents

2.1 Complete the following table with the number of **notified resource consents** (by type) processed to a decision within/outside statutory time limits in the 2007/2008 financial year.

TYPE	Notified Resource Consents				Total notified processed
	<i>With hearing</i>		<i>Without hearing</i>		
	Within 70 days	Outside 70 days	Within 50 days	Outside 50 days	
Coastal	0	0	0	0	0
Discharge	0	0	0	0	0
Land use	4	1	0	1	6
Subdivision	8	9	1	1	19
Water	0	0	0	0	0

Statutory timeframes for limited notification consents

2.2 Complete the following table with the numbers of **limited notification resource consents** (by type) processed to a decision within/outside statutory time limits in the 2007/2008 financial year.

TYPE	Limited Notification Resource Consents				Total Limited Notification processed
	<i>With hearing</i>		<i>Without hearing</i>		
	Within 70 days	Outside 70 days	Within 50 days	Outside 50 days	
Coastal	0	0	0	0	0
Discharge	0	0	0	0	0
Land use	1	0	2	2	5
Subdivision	1	2	4	1	8
Water	0	0	0	0	0

Statutory timeframes for non-notified consents

2.3 Complete the following table with the numbers of **non-notified resource consents** (by type) processed to a decision within/outside statutory time limits in the 2007/2008 financial year.

TYPE	Non-notified Resource Consents				Total non-notified processed
	<i>With hearing</i>		<i>Without hearing</i>		
	Within 40 days	Outside 40 days	Within 20 days	Outside 20 days	
Coastal	0	0	0	0	0
Discharge	0	0	0	1	1
Land use	1	1	127	183	312
Subdivision	0	2	75	181	258
Water	0	0	0	0	0

3. Cost

Notified resource consents

3.1 In the 2007/2008 financial year, what were the lowest, median and highest amounts you charged resource consent applicants for notified resource consents processed in the following resource consent categories?

Consent Type	Lowest charged (\$)	Median charged (\$)	Highest charged (\$)
Coastal	0	0	0
Discharge	0	0	0
Land use	2698	5465	10125
Subdivision	2254	6517	16656
Water	0	0	0

Limited-notification resource consents

3.2 In the 2007/2008 financial year, what were the lowest, median and highest amounts you charged resource consent applicants for limited-notification resource consents processed in the following resource consent categories?

Consent Type	Lowest charged (\$)	Median charged (\$)	Highest charged (\$)
Coastal	0	0	0
Discharge	0	0	0
Land use	989	2188	3994
Subdivision	1468	2421	14062
Water	0	0	0

Non-notified resource consents

3.3 In the 2007/2008 financial year, what were the lowest, median and highest amounts you charged resource consent applicants for non-notified resource consents processed in the following resource consent categories?

Consent Type	Lowest charged (\$)	Median charged (\$)	Highest charged (\$)
Coastal	0	0	0
Discharge	1186	1186	1186
Land use	400	1285	23512
Subdivision	374	1536	20813
Water	0	0	0

4. Monitoring and Enforcement

Monitoring and reporting

4.1 Did your local authority **monitor or report** results of any of the following during the 2007/2008 financial year?

	Monitor	Report
4.1.1 State of the environment (s 35(2)(a))	<input type="text" value="Yes"/>	<input type="text" value="No"/>
4.1.2 Suitability and effectiveness of policies and plans (s 35(2)(b))	<input type="text" value="Yes"/>	<input type="text" value="No"/>
4.1.3 Exercise of delegated or transferred functions & powers (s 35(2)(c))	<input type="text" value="Yes"/>	<input type="text" value="No"/>
4.1.4 Compliance with resource consent conditions (s 35(2)(d))	<input type="text" value="Yes"/>	<input type="text" value="No"/>
4.1.5 Complaints register (s 35(5)(i))	<input type="text" value="Yes"/>	<input type="text" value="Yes"/>

Complaints

4.2 How many recorded complaints concerning alleged breaches of the RMA (**section 35(5)(i)**) were received by your local authority during the 2007/2008 financial year for the following:

4.2.1 Excessive noise complaints	<input type="text" value="1698"/>
4.2.2 Other complaints	<input type="text" value="34"/>

Compliance with consent conditions

4.3 How many resource consents required monitoring for compliance with consent conditions during the 2007/2008 financial year?	<input type="text" value="225"/>
4.4 How many of the resource consents described in your answer to 4.3 were monitored for consent compliance during the 2007/2008 financial year?	<input type="text" value="225"/>
4.5 For those resource consents that were monitored for consent condition compliance in the 2007/2008 financial year, how many did not comply with their conditions?	<input type="text" value="37"/>

4.6 How many times were complaints or consent compliance breaches resolved to your local authority's satisfaction through the following formal enforcement and informal actions?

Enforcement Action	Complaints	Consent compliance breaches	Total
4.6.1 enforcement orders	0	1	1
4.6.2 abatement notices	12	7	19
4.6.3 excessive noise directions	458	0	458
4.6.4 prosecutions	0	0	0
4.6.5 infringement notices	0	0	0
4.6.6 informal action	344	148	492
4.6.7 yet to be determined	3	8	11
TOTAL	817	164	981

4.7 How many of the total number of infringement notices were:

4.7.1 Withdrawn	0
4.7.2 Paid	0
4.7.3 Appealed	0
4.7.4 Still in progress	0

5. Maori Participation in Resource Management Act Processes

5.1 Did your local authority keep and maintain records of each iwi and hapu group in your region / district and the documents they lodged with you **(under section 35A)** during the 2007/08 financial year?

Kept and maintain records of:

Each iwi and hapu group

Documents they lodged with you

5.1.1

Yes

5.1.2

Yes

5.2 Does your local authority provide advice or indicate to applicants that their resource consent application may be of interest/concern to iwi/hapu?

Yes

5.3 If you answered "Yes" to 5.2 above, does this generally occur prior or after formal lodgement.

After

5.4 Does your local authority have written criteria or a set policy to determine whether tangata whenua are considered an affected party to resource consent applications?

Yes

5.5 When a site, species or resource use is of concern to tangata whenua, does your local authority have a policy which requires a cultural impact assessment as part of the resource consent application?

No

5.6 Does your local authority have standard resource consent conditions which cover discovery of significant sites or items to tangata whenua?

Yes

5.7 Did your local authority make a budgetary commitment to tangata whenua participation in **resource management plan preparation and plan change processes** during the 2007/2008 financial year?

Yes

5.8 Did your local authority make a budgetary commitment to tangata whenua participation in **resource consent processes** during the 2007/2008 financial year?

No

5.9 If you answered "Yes" to 5.7 or 5.8 above, please indicate what general type of activities this budgetary commitment was spent on.

Ngatiwai – Hold Iwi Plan Management Workshops

5.10 Does your local authority involve tangata whenua in resource consent monitoring?

Yes

5.11 If you answered "Yes" to 5.10 above, please describe tangata whenua involvement in resource consent monitoring.

Onsite observation during site works

5.12 Does your local authority have formal or informal Memoranda of Understanding, protocols, joint management agreement or service level agreements with tangata whenua?

Formal

Informal

5.12.1

No

5.12.2

Yes

6. Good Practice in Resource Consent Processing

Pre-application

- 6.1 For controlled and restricted discretionary activities, do you define for applicants the environmental effects that must be addressed in the resource consent application?

Application Process

- 6.2 Before commissioning specialist reports, do you provide applicants with the opportunity to discuss or dispute the requirements to provide such information/obtain it themselves?

Assessments of Environmental Effects (AEEs) and notification

- 6.3 Do staff follow a set structure to check that environmental effects are adequately identified and addressed in AEEs?

- 6.4 Are internal guidance notes or checklists available to advise staff when to notify a resource consent application?

- 6.5 Are internal guidance notes or checklists available to advise staff how to identify affected parties?

Monitoring time frames

- 6.6 Does your local authority check a resource consent application for **completeness** (not correctness) within five working days of it arriving at your office?

- 6.7 Does your local authority use s37(1) and/or s37A to extend statutory time limits?

- 6.8 If you answered yes to 6.7, how many resource consents processed in the 2007/2008 financial year received extensions **up to twice the maximum time permitted by the Act** using section 37(2)(a).

- 6.9 If you answered yes to 6.7, how many resource consents processed in the 2007/2008 financial year received extensions **exceeding twice the maximum time permitted by the Act**, with the approval of the applicant, using section 37(2)(b).

- 6.10 How often do you monitor whether resource consents are processed within statutory time limits?

6.11 Do you formally monitor and report consent processing performance (e.g. prepare an annual report on consent processing performance that is made available to ratepayers)?

Customer satisfaction

6.12 Did your local authority run a formal, documented consent processing customer satisfaction survey between 1 July 2007 and 30 June 2008?

6.13 If you answered Yes to question 6.12, indicate the overall level of satisfaction reported by applicants:

7. Plan Changes and Variations

In relation to First Schedule of the RMA, please answer the following questions:

Plan changes

- | | | |
|-----|---|---|
| 7.1 | How many council-initiated changes to operative plans were completed by your local authority in the 2007/2008 financial year? | 0 |
| 7.2 | How many privately-initiated changes to operative plans were completed by your local authority in the 2007/2008 financial year? | 0 |
| 7.3 | How many council-initiated and privately-initiated changes to operative plans were declined or withdrawn in the 2007/2008 financial year? | 0 |

Variations

- | | | |
|-----|--|---|
| 7.4 | How many variations to a proposed plan were completed by your local authority in the 2007/2008 financial year? | 0 |
| 7.5 | How many variations to a proposed plan were declined or withdrawn in the 2007/2008 financial year? | 0 |

8. Comments

Please take the opportunity to comment on any issues that may be relevant when considering the responses of your local authority to this questionnaire:

A Customer Service Survey was carried out by the Far North District Council. This was across the whole organisation. The results of the survey were that overall, customer expectations were met or exceeded for all areas questioned.

For enquires regarding this survey please contact;

Josh Fyfe
Reporting and Communications Group
Ministry for the Environment

Email: josh.fyfe@mfe.govt.nz
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Definitions and Explanations

Section 1: Resource Consent Processing Statistics

- 1.1 A resource consent application is defined as **processed** to a decision once the local authority has approved or declined an application. It **does not** include resource consent applications withdrawn before a decision was made (even if that application involved staff time before it was withdrawn). It **does** include resource consent applications lodged before the 2007/2008 financial year if the decisions to grant or decline them were made within the 2007/2008 financial year.
- 1.2 This question refers to applications made **under section 127** (Change or cancellation of consent condition by the consent holder). Note that applications under section 127 must be treated as if they were resource consents for a discretionary activity.
- 1.3 This question refers to consent conditions made **under section 128** (Circumstances when consent conditions can be reviewed).
- 1.7 For the purpose of this survey, please include any Restricted Coastal Activities under Discretionary activities.
- 1.13 When completing this question exclude any objections made to further information requests under section 92 and applications for certificates of compliance under section 139.
- 1.14 Use the number of objections from question 1.13 to then work out the number appealed to the environment court for question 1.14.

Since there is a 15 working day period for filing an appeal, a decision made during the 2007/2008 financial year may have been appealed as late as 21 July 2007. Please include in your answer all decisions made in the 2007/2008 financial year that were appealed, where the appeal was filed up to 21 July 2008.

Section 2: Time

2.1 to 2.3 Resource consent applications are considered to be “within time” if they are processed within:

- 70 working days for notified and limited-notification consent applications involving a hearing;
- 50 working days for notified and limited-notification consent applications not involving a hearing;
- 40 working days for non-notified consent applications where a hearing was held;
- 20 working days for non-notified consent applications where no hearing was held;
- or within time limits using section 37.

When completing this section exclude resource consent applications withdrawn before a decision was made (even if that application involved staff time before it was withdrawn).

When completing this section include:

- The length of time taken to get to the initial decision - that is, disregard section 357 decisions.

The processing time clock should be stopped on the date the notice of decision is sent to the applicant and every person that made a submission, NOT the date the decision was made.

Section 3: Cost

3.1 to 3.3 When calculating the charges to the applicant please count the total cost to the applicant as billed by your local authority, **including** any initial charges and any supplementary charges as a result of hearings, information gathered etc.

Where more than one resource consent has been processed at the same time for the same project, and billed together in one invoice, average the total cost over the number of consents issued.

Please ensure your answers are **GST exclusive**.

We collect information on the **median** charge to applicants for resource consent processing. The median is the number in the middle of a set of numbers when they are in ascending order. That is, half the numbers have values that are greater than the median, and half have values that are less. If there is an even number of numbers in a set, then the median is the average of the two numbers in the middle.

Note: the median is NOT the same thing as the mean/average.

The easiest way to calculate a median is to use Excel:

1. Open the Excel spreadsheet where your charges data is stored, or export from the programme where it is stored into a single column in an Excel spreadsheet.
2. Click on the first empty cell at the bottom of the column containing the charges data.
3. Click on the = button on the Formula bar. From the drop-down menu, select 'MEDIAN'
4. Make sure the array (cells containing the data) includes **all** the cells with the data (e.g. A1:A100)
5. Click 'OK' to complete the calculation.

Section 4: Monitoring and Enforcement

- 4.1 **Monitoring** involves capturing a record of what was monitored. A record of the results of monitoring does not by itself constitute a report.
- Reporting** is defined as making the results of monitoring available in an understandable format for a defined audience. Reporting can range from informal internal council documents through to publicly available published reports.
- 4.2 Minor issues are often resolved on the spot and not recorded. Complete the questions for recorded issues only. This section refers to complaints about alleged breaches of the RMA (section 35(5)(i)). Do not include information about complaints related to other local authority functions.
- 4.3 A resource consent is defined as requiring monitoring if it is written in the resource consent conditions that it shall be monitored during the period July 1 2007 to June 30 2008.
- 4.6 Consent compliance breaches are those that were monitored or noted in the first instance through compliance monitoring or by council officers. Enforcement or informal action taken as a result of public complaints that led to unscheduled consent compliance monitoring should be recorded in the complaints column.
- 4.6.6 Informal action is defined as any action that rectifies the situation without recourse to legal procedures. Examples could include written or verbal warnings, or obtaining the offender's cooperation in ceasing what they were doing or changing their behaviour to the extent that it does no longer is cause for concern.

Section 5: Maori Participation

- 5.1 Section 35A of the RMA requires councils to keep records of iwi in their region or district. While the information may be drawn from Te Puni Kokiri, the duty to keep and maintain records lies with the local authority.
- 5.2 & 5.3 Providing advice to applicants can be over the counter or telephone advice or via an email, letter, or pamphlet.
- 5.3 Please indicate your local authorities standard practice when discussing resource consent applications. If your local authority provides advice both prior and after formal lodgement then please tick both boxes.
- 5.4 Written criteria and policies should be more than a policy that just sees all consents automatically circulated to Maori groups for comment. Criteria and policies should relate to the circumstances when Maori or their interests will be deemed to be affected and which iwi or hapu should receive copies of applications.
- 5.7 This includes internal council budgetary provision for staff costs and consultation with iwi, and any direct payments to iwi to assist them in participating in consultation, in regard to:
- Plan and policy development
 - Incorporating Maori/iwi/hapu advice into plans and policy statements.

It may also include any contribution paid towards assisting iwi in the development of planning documents recognised by the iwi authority (such as iwi management plans).

- 5.8 This includes the budget for internal staff costs, direct payment to Iwi, and costs of consulting with iwi to facilitate Maori/iwi participation in:
- Resource consent processes.

Section 6: Good Practice

We are collecting information on the use of what the Ministry for the Environment considers to be key elements of good practice in resource consent processing. Good practice should not be considered prescriptive - rather local authorities should consider the applicability of different elements of good practice to their own unique circumstances. These questions relate to **current** practice. Please do not restrict your answers to the 2007/2008 financial year. Where your answer to a question is "Most of the time", tick the "yes" box.

- 6.1 This question refers to more than a photocopy of the Fourth Schedule, for example having checklists.
- 6.3 A set structure refers to the use of any standardised guidance material such as templates, checklists and protocols (for example, those seen on the quality planning website.)
- 6.13 The overall level of satisfaction is defined as the overall result of the survey. Surveys will have multiple questions that will be answered by a number of people. An average of the result of the responses to all surveys should be used to determine the overall level of satisfaction.

Good Practice Note – Use of Section 37

The Ministry for the Environment considers it is **good practice** to use section 37 to extend time limits allowed under the RMA rather than running over time limits without informing the applicant and affected parties. Time limits can be extended for up to twice the time limit stated in the RMA (section 37(5)), or for such period as the Consent Authority thinks fit on the request of, or with the agreement of, the applicant (section 37(5A)). Where section 37 has been used to extend time periods, resource consents should be recorded as having been processed within time, provided the limits set for processing through the use of section 37 have not been exceeded.

The Quality Planning website says that it is appropriate to use section 37:

- To undertake further consultation
- To gain agreement on consent conditions resulting from a pre-hearing meeting process or to have discussions with the applicant
- If an applicant and/ or submitter wishes to have a particular expert/ lawyer at a hearing
- For a hearings committee or commissioner to make and compile a decision on a complex application
- To review complex Assessment of Environmental Effects
- To accept a late submission.

Section 7: Plan changes and Variations

7.1 – 7.5 'Completed' means that the plan change or variation was successfully incorporated into the operative or proposed plan, potentially with some modifications. Do not include plan changes or variations under appeal to the Environment Court as these have not been completed yet.

Section 8: Comments

This is your opportunity to include any information which could be relevant in considering the responses of your local authority to this survey questionnaire. This might include the reason you have been unable to answer a question, assumptions you made when answering a question, or information on difficulties your local authority has faced in meeting statutory requirements or implementing best practice guidance.