

NOTICE IS HEREBY GIVEN THAT THE MONTHLY MEETING OF THE REGULATORY AND PLANNING COMMITTEE, WILL BE HELD IN THE COUNCIL CHAMBERS, 29 CIVIC AVENUE, GORE, ON TUESDAY 14 NOVEMBER 2006 AT THE CONCLUSION OF THE OPERATIONS COMMITTEE MEETING

**Steve Parry
CHIEF EXECUTIVE**

8 November 2006

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REGULATORY AND PLANNING COMMITTEE AGENDA

NOVEMBER 2006

1. MONITORING OF RESOURCE CONSENT PROCESSING

(Memo from Planning Consultant – 03.11.06)

Introduction

Every two years the Ministry for the Environment (MfE) carries out a survey of the 86 local authorities in New Zealand assessing processes under the Resource Management Act 1991. While the primary purpose of the survey is to monitor the effectiveness and implementation of the RMA, the survey results are also used to promote local authority good practice, improve performance, and provide a basis for MfE to respond to criticisms of the RMA. The survey also enables individual local authorities to assess their own performance.

The results of the reporting period 1 July 2005 - 30 June 2006 are set out below, and compared to the previous 2003/2004 survey period. When data from the survey has been collated, MfE will prepare a report presenting the information from all local authorities which will enable comparisons to be made between Council and other authorities with similar characteristics.

1. Resource Consent Processing Statistics

| | 2005/2006 | 2003/2004 |
|--|------------------|------------------|
| Total consents processed | 48 | 79 |
| Consents declined | 0 | 1 (1.3%) |
| Consents publicly notified | 2 | 5 (6.3%) |
| Consents appealed to Environment Court | 0 | 1 (1.3%) |

Comment: It will be noted that the number of consents lodged has declined. That reduction is primarily attributable to the completion of the district plan process. With the transitional district plan having no status the number of rules that have to be complied with is significantly reduced. The number of consents for the current calendar year is unlikely to exceed 30 in total.

2. Consents Processed within Statutory Time Frames

The RMA sets out timeframes within which resource consent applications should be processed. Generally, this is 20 working days for non-notified consents, and 70 working days for a

notified consent where a hearing is held. For Gore District Council the consents processed within time were as follows (the figures in brackets are the total number of consents):

| | 2005/2006 | | 2003/2004 | |
|----------------------------|------------------|-------------|------------------|----------------|
| | Land use | Subdivision | Land use | Subdivision |
| Publicly notified consents | n/a | n/a | 2 (3) 66.7% | 0 (1) |
| Limited notified consents | 0 (1) | 0 (1) | 2(2) 100% | n/a |
| Non-notified consents | 17 (19) 89.5% | 16 (27) 59% | 40 (43) 93% | 18 (30) 60% |

Comment: It will be noted that the results are consistent between survey periods. While with reduced numbers of consents a higher completion rate on time could be expected performance has been influenced by the effort being put into the completion of the district plan, with that process having received a higher priority than resource consents at various times. An interesting feature however, is that with changes to delegations a number of consents are now being processed in less than one week.

3. Charges to Resource Consent Applicants

Charges for processing resource consents (excluding GST) vary from council to council depending on the type of consent and which type of local authority issued the consent. For Gore the maximum charge for 2005/2006 was \$400.00 and the minimum charge was \$133.00. The comparison with 2003/2004 is in the following table.

| | 2005/2006 | 2003/2004 |
|----------------|------------------|------------------|
| Maximum Charge | \$400.00 | \$3,079.35 |
| Minimum Charge | \$133.00 | \$88.88 |

Comment: Since the completion of the survey full cost recovery where practical has been applied to the processing of resource consents. While the minimum figure remains the same the maximum and average charges have risen.

4. Monitoring and Enforcement

Of the issues listed in the survey, Gore monitors the exercise of delegated powers, compliance with resource consent conditions and complaints. It does not, however, monitor the state of the environment or the suitability or effectiveness of policy and plans. Given that the District Plan has only just become operative, and the timeframe for review is 5 years, a monitoring strategy is being developed that will include both of these issues. That will be

reported to the Council separately following consultation with the local authorities of Southland and interest groups.

138 complaints were made in the 2005/2006 period about alleged breaches of the RMA or other resource management incidents. Of these, 134 were excessive noise complaints. Informal action was used to resolve 99 of these, with 31 still in progress. These all relate to Dongwha. Four excessive noise directions were issued, but no abatement notices, prosecutions or infringement notices.

Of the four resource consents that were monitored in this period, only one did not comply with its conditions. A full monitoring of resource consents issued over the past two years is intended to be undertaken prior to the end of the year.

5. Maori Participation in RMA Processes

Under the RMA local authorities have an obligation to take into account the principles of the Treaty of Waitangi. Gore has a formal Memorandum of Understanding through Te Ao Marama and makes a budgetary commitment to Iwi participation in resource management processes. This is unchanged since the last report period.

6. Good Practise in Resource Consent Processing

Gore, like most other Councils, requires inclusion of an assessment of environmental in applications for controlled and restricted discretionary activities.

Gore does monitor the processing timeframes for resource consent processing performance, but makes no formal report on the results, except as part of the two yearly reporting process. MfE considers it is good practice to use section 37 of the RMA to extend time limits for processing resource consents rather than running over time without informing the applicant and affected parties. One resource consent application had its time extended in the 2005/2006 period. Some local authorities use customer satisfaction surveys to establish what applicants think of their resource consent processes, Gore does not do that, nor is it seen as necessary.

RECOMMENDATION

THAT the Council note the results of the survey.

2. COMPOSITION OF RMA HEARING PANELS

(Memo from Planning Consultant – 03.11.06)

On 9 August 2006 various amendments to the Resource Management Act 1991 came into force. A copy of the relevant provisions is attached. The amendments require in relation to hearings for resource consent applications, requirements and requests for plan changes, any person sitting alone as a Commissioner, or any chairperson of a hearing panel, to be accredited. From 9 August 2007, the amendments require at least half of the hearing panel to be accredited.

Accreditation is achieved by completing the Ministry for the Environment “Making Good Decisions” certification programme. That programme has been completed by:

- David Pullar, Council’s Hearing Commissioner
- Cr Neil Harvey
- Cr Nicky Davis
- Keith Hovell, Council’s Consultant Planner

It should be noted that the requirement for certification does not apply to hearings dealing with:

- Submissions to plan changes initiated by Council
- Objections lodged by consent holders to conditions imposed on resource consents
- Objections on procedural matters relating to resource consents (for example, requests for further information)

While the amendment does state that no RMA decision would be deemed invalid by decision makers not holding the required certification, it would be contrary to good practice not to meet that requirement.

The Council already has in place appropriate delegations to enable David Pullar to consider non-notified resource consents and to sit alone where a hearing is required for notified resource consents. There will be occasions however where the Hearing Commissioner is either unavailable or has a conflict of interest and is unable to hear the matter, or where (in the case of major developments) he considers that more than one person should make a decision on the consent. There is therefore a need to consider an alternative Commissioner and who would be appointed to any hearing panel should the need arise.

In the past, former Councillor Harry Barton has been listed as the alternative Commissioner. However, as he is not a holder of the required certification, that role cannot continue.

Three choices are available to the Council:

1. Use its own resources (Councillors)
2. Use the resources of other Councils in Southland (either Councillors or staff)
3. Appointing additional Hearing Commissioners, although there are none available within Southland.

It is preferred that the Council use its own resources, because it is the cheapest option and persons would have a better understanding of, and affinity to, the needs of the Gore District. It is also appropriate that “local people make local decisions”.

The only exception to this proposition is in the very few contentious issues that arise which are of District-wide interest or concern. In such cases (eg Gore Multi-Sports Complex, Hands of Fame statue and Rayonier etc). It would be prudent to use a Commissioner who does not reside in the Southland region to avoid any suggestion of bias, predetermination or conflict of interest.

At this time it is also appropriate to consider the composition of the hearing panels for cases where:

- Objections lodged by consent holders to conditions imposed on resource consents
- Objections on procedural matters relating to resource consents (for example, requests for further information)

While Crs Cyril McFadzien, Cliff Bolger and Fred Sutherland are delegated to hear submissions to the two plan changes currently being processed that does not extend to the consideration of resource consent matters.

RECOMMENDATION

The Council needs to consider:

- 1. The appointment of an alternative hearing commissioner(s), bearing in mind that person(s) must be the holder of an appropriate certificate.**

- 2. The appointment of persons to a hearing panel (where required) to consider resource consent applications, requirements and requests for plan changes, bearing in mind that the Chairperson must be the holder of an appropriate certificate.**

- 3. The appointment of a hearing commissioner or hearing panel to consider objections on procedural matters relating to resource consents, and objections relating to conditions on approved resource consents, bearing in mind that in this case there is no requirement for either the Chairperson or members to be the holder of an appropriate certificate.**

RELEVANT RMA PROVISIONS

39B Persons who may be given hearing authority

- (1) This section applies when a local authority wants to apply any of sections 33, 34, and section 34A to give authority to 1 person or a group of persons to conduct a hearing on—
 - (a) an application for a resource consent notified under section 93; or
 - (b) a notice of requirement given under section 168 or section 189; or
 - (c) a request under clause 21(1) of Schedule 1 for a change to be made to a plan.
- (2) If the local authority wants to give authority to 1 person, it may do so only if the person is accredited.
- (3) If the local authority wants to give authority to a group of persons that has a chairperson, it may do so only if the chairperson is accredited.
- (4) *If the local authority wants to give authority to a group of persons, whether or not the group has a chairperson, it may do so only if over half of all persons are accredited. (Not in force until 7 August 2007)*

39C Effect of lack of accreditation

- (1) This section applies when a local authority purports to give authority under section 39B to a person or group of persons, but does not in fact give it because the person, chairperson of the group, or members of the group are not accredited as required by the section.
- (2) No decision made by the person or group of persons is invalid solely because the person, chairperson of the group, or members of the group were not accredited as required by section 39B.

3. PROPOSED STOPPING OF A PORTION OF BOUNDARY ROAD, EAST GORE

(Memo from Chief Executive – 01.11.06)

Over the past four years, the Council has endeavoured to instigate action to stop a portion of Boundary Road which runs between Hamilton and Wentworth Streets, East Gore. This particular portion is detailed in the attached survey plan along with the public notice that appeared both in local newspapers and as a sign at either end of the road. The original intention to stop this unformed road came via a review of the Council's property holdings carried out in 2002. The delay in actioning this matter has been due to the need to develop a survey plan and liaise with a number of adjoining owners.

Please find enclosed a copy of two objections that have been received in respect of the proposed stopping of the unformed road. One of these objectors, P S and J R Ware, have submitted a resource consent for subdivision of their land which involves utilising part of the unformed road that is proposed to be stopped, for an accessway to one of the new allotments. Complicating this matter is that not all adjoining owners have agreed to the Ware's subdivision proposal.

Stopping of Boundary Road is a legal process governed by the still valid portion of the Tenth Schedule of the Local Government Act 1974. On the other hand the consideration of a resource consent for subdivision of the Wares' land, which adjoins Boundary Road, is a matter which is processed under the Resource Management Act. Copies of the Ware's subdivision proposal and submissions received are also enclosed.

In an earlier report which appears on the Committee agenda the Council is asked to consider the appointment of councillors to a hearing panel to consider the resource consent applications where there is a degree of complexity or major developments are involved. Whilst this particular matter is not necessarily complex it is somewhat tricky in that we have two separate issues with independent legal processes yet they are inextricably tied together due to differing and competing views being held as to whether the unformed portion of Boundary Road should remain as a legal road.

It is therefore suggested that the Council appoint a hearings panel to consider both the road stopping proposal under the Local Government Act 1974 and the subdivision resource consent application under the Resource Management Act 1991.

I would suggest that the panel comprise of the Council's Hearing Commissioner, Mr David Pullar, the Chairman of the Planning and Regulatory Committee, Cr Harvey and Cr Davis. Both Crs Davis and Harvey have completed the Ministry for the Environment's "Making Good Decisions" certification programme. Having more than one Commissioner will hopefully add strength to the panel and replicates the process that was used approximately two years ago when a similar contentious road stopping proposal was the subject of conflicting submissions. In that instance round the table dialogue and pragmatic compromises produced an outcome that was acceptable to all parties.

RECOMMENDATION

THAT the Council appoint Hearing Commissioner, David Pullar, the Chairman of the Planning and Regulatory Committee, Cr Davis and Cr Harvey as its panel to hear both objections received to the proposed stopping of a portion of Boundary Road and the application for a subdivision resource consent submitted by P S and J R Ware.

4. REVIEW OF GAMBLING VENUE POLICY

(Memo from Chief Executive – 01.11.06)

Under Section 102 of the Gambling Act 2003, local authorities must establish and periodically review a Gaming Venue Policy. This policy must specify the number and location of class 4 gaming facilities that may be permitted to be established in a district. Class 4 gambling is defined as any activity involving licensed gambling, outside a casino.

The Council's first Gambling Venue Policy under the Gambling Act was adopted on 16 March 2004. A copy of this policy which was developed via use of the special consultative procedure is attached.

Section 102(5) of the Gambling Act specifies that a territorial local authority must complete a review of its Gambling Venue Policy within three years of adoption. Once again the special consultative procedure must be used when conducting this review.

At the time of developing this policy the Council took into consideration analysis provided by Taylor Baines and Associates that suggested the Gore District was not highly exposed to potential gambling problems. This viewpoint was extrapolated using statistics provided by Taylor Baines and Associates covering indices such as ethnicity and occupation type which, it is believed by social commentators are criteria for assessing vulnerability to gambling addiction. At that time the Gore District had a higher vulnerability score of 1.20 for occupation type which was offset by a very low score under the category of ethnicity of 0.78. The average of all indices covering the likes of ethnicity, age, labour force, status, occupation type, household size and household income was 1.00. This was exactly the equivalent of a national average in terms of gambling problem vulnerability.

The current policy was also prepared having regard for the relative inability for the Council and the community to mitigate the damaging effects from gambling, due to the number of gambling machines that enjoyed existing use rights under the legislation. These existing use rights mean that the total number of gambling machines in the Gore District as at 17 October 2001, could not be affected by any proposed policy. Therefore as at 17 October 2001 the Gore District had a total of 78 machines spread over eight different gambling venues. Also enclosed are schedules detailing the location and number of machines provided in the Gore District as at 31 December 2005

and 30 September 2006. Quarterly analysis within those two dates indicating movement in the number of machines and venues in the District are also provided. As can be seen from the enclosures the number of venues and machines provided in the Gore District while this new policy and indeed the Gambling Act has been in vogue is very stable.

By way of illustration, as at 31 December 2005 the Gore District had a total of 80 machines spread over seven venues compared to a total of 79 machines spread over six venues as at 30 September 2006.

I am unaware of any greater social problems within the Gore District that can be attributable to gambling since the current policy was adopted. Elected members may have other community networks that could endorse this contention or provide evidence to suggest otherwise. However from this vantage point there appears to be no reason why the Council cannot opt to continue with its current policy.

RECOMMENDATION

THAT the Council publicly announce its intention to continue with its current Gambling Venue Policy via conducting a special consultation process as required by Section 102 of the Gambling Act 2003.

5. REGULATORY BULLETIN

(Memo from Chief Executive – 01.11.06)

Attached is a schedule of building consents issued for October 2006, together with comparisons with the previous two years.

Also attached are schedules of resource consents issued to 31 October 2006.

RECOMMENDATION

THAT the information be received.