

CHAPTER 5

REGIONAL COUNCIL PERSPECTIVES

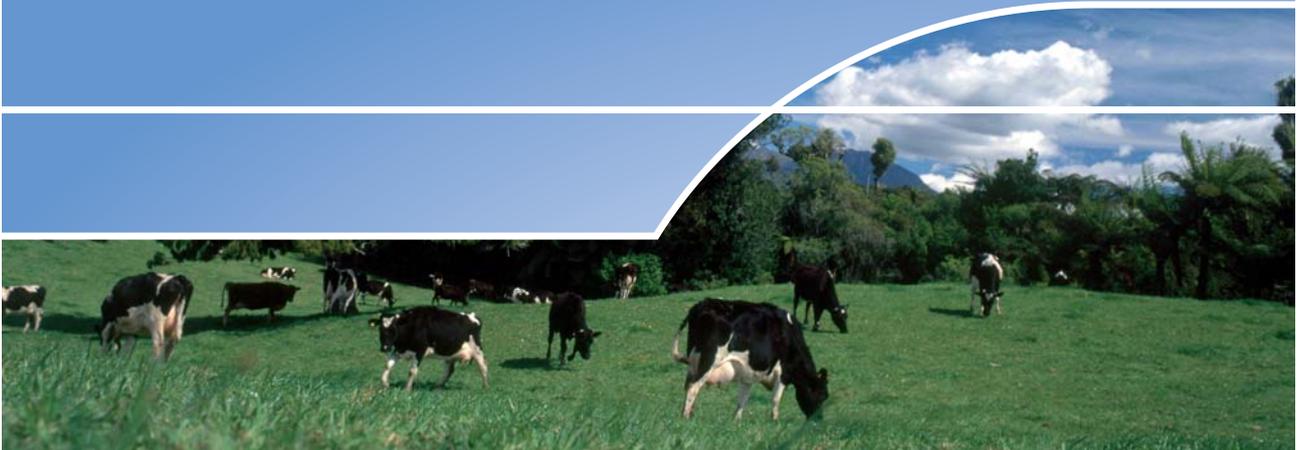


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5.1 OVERVIEW

Under the Resource Management Act (1991) the major responsibility for natural resource management was passed to 'Local Authorities'. Local authorities include Regional Councils and District Council or City Councils. Unitary Authorities combine the functions of Regional and District/City Councils. The Unitary Authorities are Gisborne, Nelson, Marlborough and Tasman.

Regional Councils are charged with managing the use of water (i.e. damming, taking or diverting water and discharging contaminants into water) while District Councils have control over the use of land (e.g. rules about subdivision and development). Regional Councils may control some activities on land if they are likely to have an impact on natural resources. Together, Regional and District Councils are responsible for the mitigation of natural hazards such as flooding.

It is clear that **any intensive use of land, such as dairy farming, will have some impact on water, air and soil.**

Finding the balance between successful dairy production and the degree of impact that may be acceptable to society is a key factor in determining sustainable dairying.

5.1.1 Functions of Regional Councils

Regional Councils are involved with the following aspects relating to farm management:

- **sustainable use of resources.** Ensuring water, air, land and geothermal resources are used in a sustainable manner that considers the needs of current users as well as future generations and minimises environmental effects
- **clean air.** Dealing with pollution. Controlling the release of gases, odours, dust, and smoke into the air
- **clean water.** Controlling the release and runoff of human, agricultural, mining, forestry and industrial wastes
- **secure land.** Maintenance and protection against erosion and natural hazards such as flooding. Regulating the disturbance of the beds of lakes and rivers
- **waste disposal.** Minimising the impacts of the disposal of waste (e.g. farm dairy effluent, industrial effluent and sewage) onto/into land or into water
- **environmental awareness.** Providing education and information services.

Regional Councils are also closely involved with the following groups:

- **district and city councils**
- **health authorities**
- **maori groups.**

5.1.1.1 District Councils and City Councils

District Councils and City Councils also have specific rules regarding practices undertaken on dairy farms. Where possible, Regional Councils work with them to develop fair and consistent rules and procedures e.g. joint Resource Consent hearings (refer to 5.3.2.1 What activities require a resource consent?).

Dairy farmers should be aware that many District Councils and City Councils have rules regarding effluent management (e.g. minimum separation distances between effluent treatment or effluent application systems and adjoining properties). **Therefore, farmers should also contact the District Council or the City Council before proceeding with any activity that will impact on the environment.**

5.1.1.2 Health authorities

Health authorities contribute to the development of Regional Councils' regional plans (refer to 5.3.1 What is a regional plan?). Therefore, the Health Act (1956) is considered as part of this development.

Under the Health Act (1956), the Ministry of Health must advise Regional Councils in matters relating to public health, and in the preventing, limiting and suppression of infectious and other diseases (section 7). Nuisances, particularly those that are injurious to health, are extensively defined in section 29 of the Health Act (1956) and penalties for permitting or causing nuisances are provided for in section 30. Public health issues are a concern in some aspects of dairy farming (e.g. farm dairy effluent management).

5.1.1.3 Iwi authorities

There is increasing institutional and social pressure to recognise and provide for Maori cultural values and practices, particularly regarding the use of natural water resources.

Under the Resource Management Act (1991) Regional Councils must recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga (section 6(e)). Particular regard must also be given to the ancestral kaitiaki or guardian role of tangata whenua (section 7(a)), and the principles of the Treaty of Waitangi need to be taken into account.

When planning to undertake an activity, local iwi may need to be consulted on the proposal.

Natural areas of special interest to iwi include:

- **water quality and quantity.** Water is of utmost importance to Maori, and the maintenance of water quality is of paramount concern
- **fish, seafood and other food sources**
- **the coastal environment**
- **sand and shingle in river beds**
- **traditional and ancestral sites, including urupa (cemeteries)**
- **marae**
- **maori land**
- **cultural resources** (e.g. materials for weaving and carving).

Where iwi planning documents exist, these often state issues of importance to particular tangata whenua and explain their consultation process. Therefore, such documents are likely to be useful for resource consent applicants.

In regard to farm dairy effluent treatment, land application is generally consistent with Maori views that effluent, however well treated, should not be allowed into surface water or groundwater but should instead be returned to the land.

5.1.2 The regions

Figure 5.1-1 Regional Council Boundaries shows the Regional Council boundaries and Table 5.1-1 gives the addresses and contact numbers of the various Regional Councils.

REGIONAL COUNCIL BOUNDARIES

- Regional Council Boundaries
 Except for the following Unitary Authorities:
- Gisborne District Council
 - Tasman District Council
 - Nelson City Council
 - Marlborough District Council

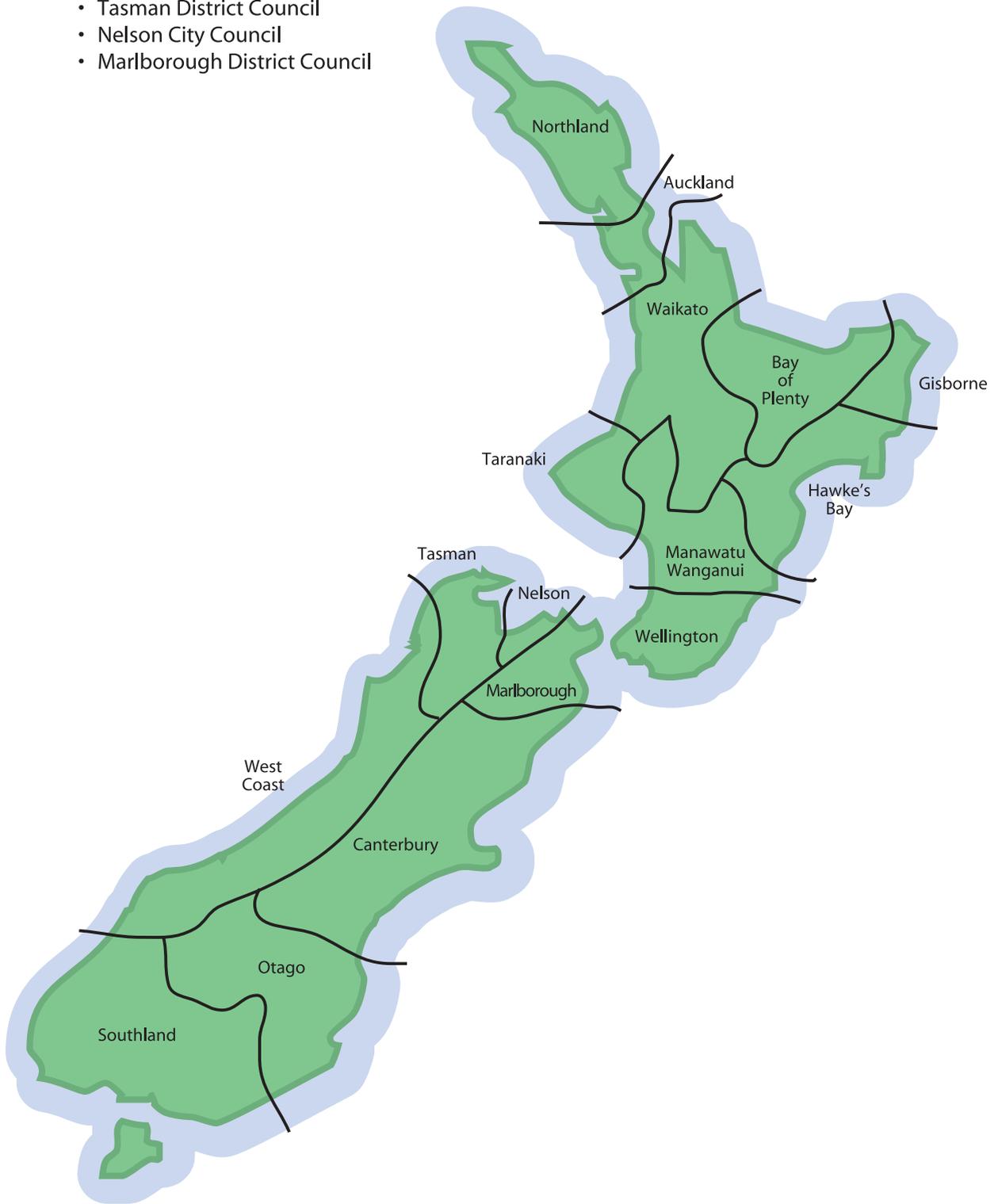


TABLE 5.1-1

REGIONAL COUNCIL CONTACT INFORMATION

| | | |
|--|--|--|
| Northland Regional Council | 38 Water St Private Bag 9021, Whangarei 0140 | Freephone: 0800 002 004 www.nrc.govt.nz |
| Auckland Regional Council | 21 Pitt Street, Private Bag 92912 Auckland 1643 | Phone: 09 366 2000 www.arc.govt.nz |
| Environment Waikato | 401 Grey Street PO Box 4010, Hamilton East 3247 | Freephone: 0800 800 401 www.ew.govt.nz |
| Environment BOP | Quay Street PO Box 364, Whakatane 3158 | Freephone: 0800 368 267 www.envbop.govt.nz |
| Gisborne District Council | Fitzherbert Street PO Box 747, Gisborne 4040 | Phone: 06 8672049 www.gdc.govt.nz |
| Hawke's Bay Regional Council | 159 Dalton Street Private Bag 6006, Napier 4142 | Freephone: 0800 108 838 www.hbrc.govt.nz |
| Taranaki Regional Council | 47 Cloton Road Private Bag 713, Stratford 4352 | Freephone: 0800 736 222 www.trc.govt.nz |
| Horizons Regional Council (Manawatu-Wanganui) | 11-15 Victoria Avenue, Private Bag 11025, Palmerston North 4442 | Freephone: 0508 446 749 www.horizons.govt.nz |
| Wellington Regional Council | 34 Chapel Street, PO Box 41, Masterton 5840, Wairarapa 142-146 Wakefield Street, Wellington PO Box 11646, Wellington 6142 | Freephone: 0800 496 734 www.gw.govt.nz Freephone: 0800 496 734 www.gw.govt.nz |
| Marlborough District Council | 15-21 Seymour Square PO Box 443, Blenheim 7240 | Phone: 03 5785249 www.marlborough.govt.nz |
| Tasman District Council | 189 Queen Street Private Bag 4, Richmond 7050 | Phone: 03 5438400 www.tdc.govt.nz |
| Nelson City Council | 110 Trafalgar Street PO Box 645, Nelson 7040 | Phone: 03 5460200 www.ncc.govt.nz |
| Environment Canterbury | 58 Kilmore Street PO Box 345, Christchurch 8140 | Phone: 03 3653828 www.ecan.govt.nz |
| West Coast Regional Council | 388 Main South Road PO Box 66, Greymouth 7840 | Phone: 03 7680466 www.wcrc.govt.nz |
| Otago Regional Council | 70 Stafford Street Private Bag 1954, Dunedin 9054 | Freephone: 0800 474 082 www.orc.govt.nz |
| Environment Southland | Cnr North Road/Price Street Private Bag 90116, Invercargill 9840 | Phone: (03) 211 5115 or 0800 76 88 45 (Southland only) www.es.govt.nz |

5.2 RESOURCE MANAGEMENT ACT (1991)

The Resource Management Act (1991) was introduced to control activities that may affect the environment. It replaces much of the previous legislation relevant to the environment.

The Resource Management Act (1991) has as its stated purpose:

“to promote the sustainable management of natural and physical resources.”

“Sustainable management” means managing the use, development and protection of resources in a way, or at a rate, that enables New Zealanders to provide for their social, economic and cultural well-being, and provide for their health and safety.

The challenge for Regional Councils under the Resource Management Act (1991), in farm dairy effluent treatment and other dairy farm management issues, is to design policies that:

- **enable farmers to provide for their economic and social well-being**
- **safeguard the life supporting capacity of natural water, air, soil and ecosystems**
- **avoid, remedy or mitigate the adverse effects of dairying on the environment.**

The challenge for New Zealand dairy farmers is to demonstrate that their actions will prevent or minimise environmental effects in each individual situation. This should take into account the following factors:

- **the effect of the activity in relation to the natural environment.** For example, when discharging farm dairy effluent to a waterway, the waterway flow requirement to obtain minimum dilution levels will have to be considered during the period of low flows (i.e. during summer months)
- **the effectiveness, cost and other benefits of all options**
- **the state of technical knowledge at the time.**

Every dairy farmer has a responsibility under the Resource Management Act (1991) to avoid, remedy or mitigate any adverse environmental effect arising from their activities (section 17). Under section 15, any activity that is not specifically permitted by the regional plan, and will discharge contaminants to water or land where it may enter water requires a resource consent.

5.2.1 Restrictions relating to discharges

Regional Councils are constrained by the Resource Management Act (1991), section 70, when developing regional plans. Before a rule permitting a discharge to water (or to land where it may eventually enter water) can be included in a regional plan, the Regional Council must be satisfied that the discharge, after reasonable mixing, does not result in the following outcomes:

- **conspicuous oil or grease films, scums, foams, floatable or suspended materials**
- **conspicuous changes in colour or visual clarity**
- **emission of objectionable odours**
- **a rendering of the water unsuitable for stock water**
- **adverse effects on aquatic life.**

Effluent discharges are controlled by these legislative obligations of the Resource Management Act (1991). Since the Resource Management Act (1991) is concerned with effects, Regional Councils are focused on **‘outcomes’** rather than **‘best practicable options’**. However a resource consent may include a condition requiring the holder to adopt the ‘best practicable option’ to prevent or minimise any actual or likely adverse effect on the environment (section 108).

Discharge of contaminants into the environment, including onto land, requires either a rule in the regional plan permitting this activity, a resource consent or regulations detailing the ‘outcomes’ (section 15). Minimum national restrictions on granting resource consents, listed in section 107, are that a contaminant discharge cannot directly or indirectly enter water if it:

- **produces an objectionable odour**
- **renders water unsuitable for consumption by farm animals**
- **causes any adverse effects on aquatic life.**

The promotion by Regional Councils of land application as a preferred method of effluent treatment is driven by the fact that land application generally minimises any effect on the environment.

This is why Regional Councils in some regions do not require farmers to obtain a Resource Consent for land application, but have made land application a permitted activity. Permitted activities still have standards that must be met, otherwise the activity will require a resource consent.

Any effluent treatment system that eventually discharges into a surface waterway (e.g. pond systems, barrier ditches, constructed wetlands) **has the potential to adversely affect that waterway.**

This is why a resource consent must be obtained by farmers in all regions before discharging treated effluent to a waterway.

Regional Councils are trying to encourage sustainable practices by rewarding good environmental management and forcing those who adversely affect the environment to pay more.

Farmers with effluent management systems that comply with the Regional Council's standards and do not pollute waterways or groundwater will incur lower fees and charges. Permitted activities may not incur a charge, and consented activities will incur lower charges if there is less monitoring required.

Even with permitted activities, farmers will have to keep records as evidence that their systems are working to the required standard.

Farmers whose:

- **discharge from their effluent treatment system requires a resource consent, and/or;**
- **discharge fails to comply with the conditions of the permitted activity rule; will have to pay resource consent application and renewal fees and fees for monitoring as well as fines if they fail to meet the conditions of their resource consents.**

5.2.2 Enforcement provisions

There are several methods of enforcement available to Regional Councils:

- **issuing an 'infringement notice'.** A local authority enforcement officer can issue an infringement notice. The Resource Management Act specifies offences subject to infringement notices, which are usually minor. An infringement notice carries an associated infringement fee - an instant fine of up to \$750
- **servicing 'abatement notices'.** Through an 'abatement notice' the Regional Council can direct a farmer to cease, or not commence, an activity that has (or is likely to have) an adverse effect on the environment. Abatement notices can also require people to undertake an action i.e. to do something rather than stop doing something. Any such notice must be complied with within a minimum period, usually seven days. An abatement notice is a legal requirement requiring compliance to avoid further enforcement action
- **undertaking urgent preventative or remedial action.** Regional Council officers can enter private property and can take action or direct occupiers to take action to address an emergency. An emergency is a situation that is causing or likely to cause loss of life, injury or serious damage to property or the environment
- **enforcement orders.** These are issued by the Environment Court rather than the Council and anyone can request that an enforcement order be issued. The issuing of an enforcement order will be followed by a hearing
- **prosecuting.** For serious and/or recurring non-compliance, prosecution may result. Conviction may result in up to 2 years in prison or fines of up to \$200,000 and additional fines of up to \$10,000 per day for any continuing offence.

Multiple people can be fined or prosecuted for the same offence e.g. a sharemilker, farm owner and farm worker could all be fined.

5.3 REGIONAL PLANS AND RESOURCE CONSENTS

Each Regional Council must prepare a **'regional policy statement'**.

This statement provides an overview of the region's resource management issues and gives direction as to how those issues will be addressed in an integrated way.

'Regional plans' are optional but are often prepared for the management of specific issues, such as water quality.

For example, a regional water quality plan contains rules for various **'activities'** that impact on water quality.

Regional Councils issue 'resource consents' for particular activities undertaken in the region (refer to 5.3.2 What is a resource consent?)

5.3.1 What is a regional plan?

Regional plans contain objectives, policies and methods (including rules) to address resource management issues. They may be general (e.g. a regional water quality plan) or specific (e.g. a regional discharges to land plan). The rules are put in place so that the policies of the Regional Council can be effectively carried out. When regional plans are prepared, reviewed or changed the council asks for submissions from the public.

The Resource Management Act (1991) allows for six types of activities:

- **permitted activities**
- **controlled activities**
- **discretionary activities**
- **restricted discretionary**
- **non-complying activities**
- **prohibited activities.**

The following sections are a summary outlining the conditions of each activity. For a detailed explanation of these, refer to section 2 of the Resource Management Act (1991).

5.3.1.1 Permitted activities

A permitted activity can be carried out without a resource consent from the Regional Council. This means there may be no application costs or annual user charges. Regional plans normally reserve the permitted activity status for those activities that are relatively common, with minor effects and that are relatively well understood.

Permitted activities are often subject to conditions. Failure to comply with the conditions would move the activity to controlled activity or discretionary activity status.

5.3.1.2 Controlled activities

A controlled activity requires a resource consent but the Regional Council must grant the consent if the application meets the conditions in the regional plan. Applications will usually be non-notified. The regional plan will state this, as well as from whom written approvals are required.

The controlled activity rule in the regional plan will list the aspects of the activity that the Regional Council wishes to retain some control over. Additional conditions may be placed on the resource consent with respect to only those aspects of the activity.

5.3.1.3 Discretionary activities

Discretionary activities require a resource consent. The Regional Council retains discretion over all aspects of the activity. An application for a discretionary activity may or may not be granted. Applications are more likely to be notified.

5.3.1.4 Restricted discretionary activities

A restricted discretionary activity requires a resource consent. The consent authority can exercise discretion as to whether or not to grant consent, and to impose conditions, but only in respect of matters to which it has restricted its discretion in the plan.

5.3.1.5 Non-complying activities

A non-complying activity requires a resource consent. Such an activity is one that either goes against a rule in the regional plan or does not meet the terms and standards required for a discretionary activity or is specifically described in a regional plan as non-complying.

Such an activity will be granted a resource consent only if it is to have minor environmental effects and it is not contrary to the policies and objectives of the regional plan.

5.3.1.6 Prohibited activities

Prohibited activities (as described in regional plans) are not allowed in any circumstances.

5.3.2 What is a resource consent?

A resource consent is permission to undertake a specified activity.

Resource consents may be in the form of a **land use consent, discharge permit, water permit** or **coastal permit** (refer to 5.3.2.1 What activities require a resource consent?).

Resource consents have an expiry date and conditions imposed on the activity. They can be used until the expiry date - and beyond if a replacement consent has been applied for at least six months before the expiry date.

A resource consent can be reviewed by the Regional Council in certain circumstances. The holder may apply for a change to the resource consent by writing to the Regional Council.

A resource consent can be cancelled at any time by writing to the Regional Council.

5.3.2.1 What activities require a resource consent?

A resource consent is required for any activity that is deemed a **controlled activity, discretionary activity, restricted discretionary** or **non-complying activity**. Any activity affecting the land, air or natural water may be defined as a controlled, discretionary or non-complying activity by the Regional Council and will require one of the following resource consents:

- **land use consent.** For any activity that disturbs a river or lake bed (e.g. drilling or altering a bore; dredging; reclamation; building a structure such as a jetty, bridge or culvert; gravel extraction; earthworks; vegetation clearance)
- **discharge permit.** For any activity involving discharges of water or contaminants into water, land or air
- **water permit.** For any activity that involves taking, damming or diverting natural water
- **coastal permit.** For any activity involving effects on the coastal marine area (e.g. occupying the coastal marine area, taking water from an estuary or the sea).

Resource consents **are not** required for **permitted activities** under the Resource Management Act (1991) as long as the conditions or standards for that permitted activity, as specified in the regional plan, are met. Each Regional Council has information available to inform the public what activities are permitted activities.

Resource consents **are not** required for reasonable domestic freshwater needs, for stock or for firefighting, as long as these activities have no adverse environmental effects.

Additional consents may also be required from the District Council or City Council (refer to 5.1.1.1 District Councils and City Councils).

5.3.2.2 How to apply for a resource consent

Lodging the Consent Application

The application must contain sufficient information so that the Regional Council and other interested parties can fully understand the implications of the proposal. The degree of detail depends on the scale and the nature of the proposal, but all applications should include:

- **the location of the proposed activity.** This may require the submission of a drawing or photographs
- **a description of the proposal**
- **a description of alternative locations and methods and justification for the proposed methods**
- **the type of permit being sought.** This can be found by reading the regional plan or by contacting Regional Council staff
- **a description of consultation.** Consultation with affected parties must be undertaken. The application should include information on who has been consulted, how this was undertaken, what concerns were raised and the outcome of the consultation
- **an assessment of the environmental effects.** List the effects that the activity may result in (e.g. loss of a spawning habitat for fish, changes in vegetation adjacent to the stream). Distinguish between positive or adverse, temporary or permanent, low probability or high probability, and cumulative effects
- **the nature of any discharges or hazardous substances**
- **details of any proposed monitoring.**

Most Regional Councils have application forms relating to specific activities that are being considered.

Resource Consent Processing

Once the application has been submitted, the Regional Council may choose to 'notify' interested or affected parties of the intended activity.

Notification may result in interested parties making a submission on the proposed activity. Regional Council staff will then negotiate with interested parties and may report to a hearing where the decision to grant a resource consent will be made. At the hearing, applicants and submitters can present their cases.

If the application is 'non-notified', the decision will be made without a hearing.

Notified

When applying for a resource consent, the Regional Council may choose to '**notify**' interested or affected parties of the intended activity with the intention of gaining a response.

A notified application is one that is advertised for '**submissions**' from the public.

Your application will be publicly notified in the local newspaper if you have been unable to obtain permission from all affected parties when your proposed activity could have:

- a major effect on the environment
- an impact on people living in the area
- an impact on other uses of the resource.

Copies of your application will be sent directly to known affected or interested parties.

Such parties may include owners and occupiers of the land, adjacent land owners and occupiers, the District Council, hapu and iwi, the Fish and Game Council, the Department of Conservation, the Ministry of Transport, the Ministry for the Environment, the Historic Places Trust and the Ministry of Agriculture and Fisheries.

Interested parties may make a submission to the Regional Council outlining their concerns and desires.

Limited Notification

The Resource Management Amendment Act 2003 resulted in sections 93 and 94 of the principal Act being repealed and substituted with new sections, along with the substitution of a new subsection 96(1). Within the new section 94, provisions were introduced that allow for the limited notification of resource consent applications. The limited notification procedures can be utilised in instances where:

- the adverse effects of the activity on the environment will be minor, and
- the applicant has not obtained the written approval of all those persons who may be adversely affected by the proposal (where required), and
- there are no rules that state such applications must be notified or dealt with on a non-notified basis.

If the above circumstances are applicable, the consent authority must serve notice of the application on all persons who may be adversely affected by the activity, even if some of those persons have already given their written approval to the activity. Under the provisions of the new subsection 96(1), only those persons who have been served notice of the application are able to lodge a submission on a limited notification application.

Before the 2003 Amendment Act the application had to be publicly notified if an applicant was unable to provide written approval from all affected parties. In essence, the limited notification provisions avoid the requirement for full public notification in instances where the applicant is unable to secure the written approval of all affected parties.

Non-Notified

'Non-notified' applications are quicker and cheaper to process. The application may take as little as 20 days to be approved or refused. The Regional Council can choose 'not to notify' if:

- **they are satisfied that the activity will have minor adverse environmental effects**
- **you have obtained written approval from all parties** that the Regional Council considers may be affected by the activity
- **the regional plan states that such an activity may be non-notified.**

Hearings

Following notification, any concerns will be considered by Regional Council staff and may result in either an agreement negotiated by the Regional Council, or a **'pre-hearing meeting'** or a **'hearing'**.

Pre-hearing meetings provide an opportunity for the applicant and submitters to resolve their points of disagreement. In some cases, these issues may be resolved to the satisfaction of the Regional Council. If so, there is no need for a formal hearing.

Pre-hearing meetings, where requested, can be facilitated by Regional Council staff.

It is at a hearing that applicants, submitters and Regional Council staff can clearly air their views. Most Councils have a **'hearings committee'** which hears applications for resource consents and makes a decision.

Hearings before a hearings committee may be required for applications that have received submissions and that were not able to be resolved at a pre-hearing meeting. They also may be required for any application where the Regional Council staff recommend that it be declined.

Decisions

A decision will then be reached either by the Regional Council or by the hearings committee.

Often the Regional Council management is given authority to make decisions. This reduces the costs of resource consents and the application process may be completed earlier.

The application may take up to 90 days to be approved or refused if notification has taken place.

Inspections

During the processing phase of an application, a Regional Council staff member is likely to arrange a meeting with the applicant, on the proposed site of the activity, to discuss the application and to inspect the site.

Objections and Appeals

If the applicant or any interested party is dissatisfied with a decision made by the Regional Council, or by staff on behalf of the Regional Council, they may be entitled to:

- lodge an objection with the Regional Council. But only if the application was non-notified; **or** the application was notified and no submissions were made; or submissions were made but were later withdrawn (applicant only)
- lodge an appeal or inquiry with the Environment Court in Wellington (applicant or party that has made a submission).

Consent Costs

The two types of charges relating to resource consents are **application fees/processing costs** and **annual user charges**.

Regional Councils will recover from applicants the full cost of processing applications. A deposit is usually required with applications.

Once the resource consent is granted, an annual user charge will be applied by the Regional Council. This money will go towards the costs of administration, monitoring and supervision of the resource consent, and monitoring of associated environmental effects.

A resource consent may be transferred to another holder during the period of the resource consent if written notice is given to the Regional Council. Ask if a transfer application form is available. If the resource consent is transferred, the annual user charges may be apportioned between the new and existing resource consent holders.

Additional supervision and monitoring charges will often apply where resource consent holders do not meet the conditions of their permit, and additional monitoring visits are required.

5.3.2.3 Monitoring of resource consents

The Regional Council must monitor the use of resource consents and the resulting impacts on the environment. This is generally undertaken by requiring the consent holder to submit records or by visiting the location of the activity and checking that the resource consent is being complied with.

Some resource consents may be subject to individual monitoring programmes, with the consent holder being at least partly involved in the monitoring.

Monitoring, particularly of discharges of effluent to water, may involve water quality sampling upstream and downstream of the discharge point.