phillips fox

Our ref: WN 712695

Phillips Fox Tower
209 Queen Street
PO Box 160
Auckland
New Zealand
DX CP24027 Akld
Tel +64 9 303 2019
Fax +64 9 303 2311
www.phillipsfox.com

Adelaide
Brisbane
Canberra
Melbourne
Perth
Sydney
Auckland
Wellington
Hanoi
Ho Chi Minh City

31 July 2002

Steve Blakemore
Wellington Regional Council
PO Box 41
MASTERTON
By email steve.blakemore@wrc.govt.nz

Dear Steve

Application for resource consent by Dan Riddiford

You have asked us to provide you with our opinion in respect of two issues arising from an application for resource consent by Dan Riddiford in respect of an aquaculture activity. Those two issues are as follows:

1 The Council's right to not 'receive' an incomplete application and/or an application when the required fees have not been paid (as per properly established Council charging policies and procedures under the Resource Management Act 1991 (**the RMA**)).

2 The requirement for, or alternatively the appropriateness of, a joint hearing to consider closely related applications in an integrated way, when only one Council's consent may be non-notified.

We have also considered the following third issue:

3 The position under the Resource Management (Aquaculture Moratorium) Amendment Act 2002.

1 The Council's right to not 'receive' an incomplete application

1.1 In our opinion, the Council does have the right to not 'receive' an incomplete application and/or an application for which the required fee has not been paid.

1.2 Section 88(4) of the RMA sets out the minimum requirements for all resource consent applications. That subsection provides that:

> Subject to subsection (5), an application for a resource consent shall be in the prescribed form and shall include –
>
> (a) A description of the activity for which consent is sought, and its location; and

(b) An assessment of any actual or potential effects that the activity may have on the environment, and the ways in which any adverse effects may be mitigated; and

(c) Any information required to be included in the application by a plan or regulations; and

(d) A statement specifying all other resource consents that the applicant may require from any consent authority in respect of the activity to which the application relates, and whether or not the applicant has applied for such consents; and

(e) Where the application is for a subdivision consent, the information specified in section 219.

1.3 An application that does not fulfil these requirements clearly does not meet the statutory requirements and therefore it appears that a Council is not obliged to 'receive' the application until the minimum requirements have been met.

1.4 This is the approach taken by the Ministry for the Environment (**MfE**) which has published 'A Template for Quality Processing of Resource Consents'. This outlines, at chapter 3, what MfE regards as good practice in respect of the receipt by Councils of applications for resource consent. According to this publication, an application is properly made (and therefore complete) if the following is supplied in/with an application:

- Fee/deposit to cover preliminary fixed charge [application fee] – where applicable.
- Name and address of applicant and owner/occupier of land to which the application relates.
- Description of the activity and its location.
- Assessment of effects, recognising that a plan may specify matters to be addressed.
- Information required by a plan.
- Type of consent sought and other resource consents required.
- Date and signature.

1.5 Therefore, MfE's position appears to be that if the above requirements have not been met the Council has not yet received a proper application, although this is not expressly stated.

1.6 This approach is reinforced by two decisions made by the Planning Tribunal under the Town & Country Planning Act which are still relevant. Where an applicant has failed to provide sufficient information, required by a Council to enable it and potential objectors to assess the likely impact, then the Council may be entitled to dismiss the application out of hand: *Druids Trustees v Wellington City* W 98/84 (PT); *Power v Rotorua DC* A 24/90 (PT).

2 **The requirement for a joint hearing to consider closely related applications**

2.1 The Council has the discretion to hold a joint hearing.

2.2 Section 102 of the RMA provides for joint hearings by two or more consent authorities. Section 102(1) provides:

(1) Where applications for resource consents in relation to the same proposal have been made to 2 or more consent authorities, and those consent authorities have decided to hear the applications, the consent authorities shall jointly hear and consider those applications unless –

(a) All the consent authorities agree that the applications are sufficiently unrelated that a joint hearing is unnecessary; and

(b) The applicant agrees that a joint hearing need not be held.

2.3 Section 102(1) requires consent authorities to conduct a joint hearing where applications for resource consent in respect of the same proposal have been made to more than one consent authority unless the consent authorities agree that the applications are sufficiently unrelated and the applicant for the consent also agrees that a joint hearing need not be held: *An application by Canterbury Regional Council* C 13/94.

2.4 A joint hearing can still be held even if one of the applications could be dealt with non-notified (s101(2A)). Obviously, those who can be heard in relation to the non-notified application are limited to the applicant and the council.

2.5 There is nothing in the case law to suggest that whether or not applications for resource consent are sufficiently unrelated so as to justify separate hearings is anything other than a question to be decided by the particular authorities on the particular facts before them.

2.6 However, where a joint hearing is held in respect of a restricted coastal activity, under s.102(3) a joint decision is not required. Nor is a joint decision required where any authority considers it is not appropriate.

2.7 If the aquaculture activity applied for by Dan Riddiford is a restricted coastal activity, it may be that a joint decision is not required, but this does not obviate the need for a joint hearing under s.102(1).

3 Resource Management (Aquaculture Moratorium) Amendment Act 2002

3.1 Under the Resource Management (Aquaculture Moratorium) Amendment Act 2002, the 2 year moratorium on aquaculture activities applies to:

- applications requiring notification which were made to a consent authority before 28 November 2001 where the consent authority had not, at that date, notified the application;
- applications not requiring notification which were made before 28 November 2001 if the consent authority had not before that date decided not to notify the application.

3.2 Therefore, under the Amendment Act, the application made by Dan Riddiford, even if the Council had 'received' a proper application by 28 November 2001, could not be processed until after the expiry of the 2 year moratorium, unless the Council had already made a decision whether or not to notify his application.

If you have any further queries, please contact us.

Yours sincerely

Helen Atkins
Partner
Direct +64 9 300 3811
Email helen.atkins@phillipsfox.com
OPN

Rachel Hawkins
Solicitor
Direct +64 9 300 3855
Email rachel.hawkins@phillipsfox.com