



Resource Legislation Amendments 2017

RESOURCE LEGISLATION AMENDMENTS 2017 – FACT SHEET 10

New matters to consider for resource consents and designations

This is part of a series of 16 fact sheets that give an overview of recent resource legislation amendments.

This fact sheet outlines the new matters to be considered in substantive decisions on resource consent applications under the Resource Management Act 1991 (RMA), which come into effect on 18 October 2017.

Subdivision consents may be refused or have conditions to manage risks from any natural hazards

Consideration of wider natural hazards

Previously decision-makers could only take into account the following types of natural hazards when considering resource consent applications for subdivisions under section 106 of the RMA:

- erosion
- falling debris
- subsidence
- slippage
- inundation from any source likely to result in material damage.

Similarly, decision-makers could place conditions on subdivision consents under section 220 to address the following, but no other, natural hazards:

- erosion
- subsidence
- slippage
- inundation.

Sections 106 and 220 of the RMA have been amended to broaden the range of natural hazards to be considered, to reflect the definition of 'natural hazards' in section 2 of the Act (as follows):

Any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment.

The intent of this change is to ensure that all natural hazards are considered in decisions and conditions on subdivision consent applications.

Risk-based approach to considering natural hazards

Previously sections 106 and 220 of the RMA did not require decision-makers to take a risk management approach to considering natural hazards in subdivision consent applications. Some decisions have excluded low-likelihood and high-consequence hazards from being considered (for example, *Kotuku Parks Ltd v Kapiti Coast DC EnvC A073/00*).

Sections 106 and 220 of the RMA have been amended to introduce a risk-based approach to considering subdivision consent applications.

Councils can now refuse subdivision consent if there is a significant risk from natural hazards. To determine whether there is a significant risk from natural hazards, decision-makers are guided by the matters set out in section 106(1A). This includes a combined assessment of:

- the likelihood of natural hazards occurring (whether individual or in combination)
- the material damage that would result from natural hazards to land where the consent is sought, other land, or structures
- any likely subsequent use of the land where the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in the previous point.

This will be assisted over time by provisions in plans and policy statements that recognise and provide for the management of significant risks from natural hazards (which is a new matter of national importance in section 6 of the RMA).

The intent of these changes is to require decision-makers to consider the magnitude of risk of natural hazards, including natural hazards that have a high impact but low probability of occurrence. This will align assessments with the definition of 'effect' in section 3 of the RMA, which includes any potential effect of low probability with a high potential impact.

Offsetting adverse environmental effects

Previously there was some variation in how environmental offsets or compensation were considered in assessments of resource consent applications, or notices of requirement for designations under the RMA.

The RMA has been amended to require councils, when considering applications for resource consent under section 104, or a notices of requirement for designations under sections 168A or 171, to have regard to measures proposed or agreed by applicants or requiring authorities, to ensure positive effects on the environment that offset or compensate for any adverse effects on the environment.

Measures proposed to ensure positive environmental effects that offset or compensate for adverse effects could include matters such as new public access ways, revegetation of land or predator control programmes. The amendment is not intended to facilitate monetary compensation in lieu of avoiding, mitigating or remedying adverse effects. Monetary forms of environmental compensation may be appropriate in limited circumstances, however.

If a person proposes some type of measure to offset or compensate for adverse environmental effects, it will usually be one of the various (and sometimes competing) matters that decision-makers

must have regard to. The level of consideration that should be given to a particular measure will vary, depending on factors such as the quality of the measure that has been volunteered, its connection to the adverse effects being incurred by the proposed activity, or the relevant policy framework.

Measures proposed to offset or compensate for any adverse environmental effects are not considered in:

- assessments whether to notify resource consent applications under section 95, or notices of requirement under [sections 149ZCB to 149ZCF]
- the 'gateway' test for non-complying resource consent applications under section 104D(1).

The intent of this change is to clarify how environmental offsets and compensation are considered by decision-makers in order to address past inconsistencies.

Limited Scope of resource consent conditions

Previously the RMA included a list of matters that consent authorities could address in resource consent conditions. This list was non-exclusive, however, and consent authorities could place any conditions they considered appropriate, with key principles established through case law. These factors contributed to uncertainty around the scope of conditions that could be imposed, leading to litigation between councils and applicants.

The RMA has been amended to introduce a new section 108AA, which limits the scope of resource consent conditions. Conditions can only be imposed on a consent if at least one of the following is satisfied:

- the applicant agrees to the condition;
- the condition is directly connected to an adverse effect of the activity on the environment;
- the condition is directly connected to an applicable district rule, regional rule, or national environmental standard; or
- the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

In this context, an 'applicable rule' means a rule that is the reason, or one of the reasons that a resource consent is required for the activity.

These limitations do not prevent:

- consent authorities from refusing subdivision consent to manage risks of natural hazards (section 106) or other subdivision requirements (section 220)
- regulations to determine the form or content of consent conditions.

The intent of this change is to provide greater certainty to resource consent applicants, consent authorities and submitters on the scope of consent conditions.

Fact sheets in this series

This is one of a series of 16 fact sheets providing an overview of amendments to the:

- Resource Management Act 1991
- Conservation Act 1987
- Reserves Act 1977
- Public Works Act 1981
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

The full set of fact sheets is available on our website:

www.mfe.govt.nz/publications/rma/resource-legislation-amendments-2017-fact-sheet-series

Find out more

Contact the Ministry for the Environment by emailing info@mfe.govt.nz, or visit www.mfe.govt.nz/rma.

Disclaimer

The information in this publication is, according to the Ministry for the Environment's best efforts, accurate at the time of publication. The information provided does not alter the laws of New Zealand and other official guidelines or requirements. Users should take specific advice from qualified professional people before undertaking any action as a result of information obtained from this publication.

The Ministry for the Environment does not accept any responsibility or liability whether in contract, tort, equity or otherwise for any action taken as a result of reading, or reliance placed on the Ministry for the Environment because of having read any part, or all, of the information in this publication or for any error, or inadequacy, deficiency, flaw in or omission from the information provided in this publication.

Published in April 2017 by the
Ministry for the Environment
Publication number: INFO 784k



*Making Aotearoa New Zealand
the most liveable place in the world*

New Zealand Government