



Ministry for the
Environment
Manatū Mō Te Taiao

A technical guide to Deemed Permitted Activities

UNDER THE RESOURCE MANAGEMENT ACT 1991

(resulting from changes made by the Resource
Legislation Amendment Act 2017)

Disclaimer

The information in this publication is, according to the Ministry for the Environment's best efforts, accurate at the time of publication and the Ministry makes every reasonable effort to keep it current and accurate. However, users of the publication are advised that;

- the information provided does not alter the laws of New Zealand and other official guidelines and requirements
- users should take specific advice from qualified professional people before undertaking any action as a result of information obtained in this publication
- the Ministry for the Environment does not accept and responsibility or liability whatsoever whether in contract, tort, equity or otherwise for any action taken as a result of reading, 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
- all references to websites, organisations or people not within the Ministry for the Environment are provided for conveniences only and should not be taken as endorsement of those websites or information contained in those websites nor of organisations or people referred to.

Acknowledgements

The Ministry for the Environment would like to thank the local authorities who provided feedback on this guidance in draft form.

This document may be cited as: Ministry for the Environment. 2017. *A Technical Guide to Deemed Permitted Activities*. Wellington: Ministry for the Environment.

Published in September 2017 by the
Ministry for the Environment
Manatū Mō Te Taiao
PO Box 10362, Wellington 6143, New Zealand

ISBN: 978-1-98-852521-1 (online)

Publication number: ME 1330

© Crown copyright New Zealand 2017

This document is available on the Ministry for the Environment website: www.mfe.govt.nz.



Making Aotearoa New Zealand
the most liveable place in the world

Contents

Introduction	5
Purpose of this guide	5
Background and intent of the changes	5
Deemed permitted activities at a glance	7
Deemed Permitted Boundary Activities	9
Introduction and Key Definitions	9
Boundary rules	12
Infringed boundaries	15
Information required in a deemed permitted boundary activity application	20
How is the deemed permitted boundary activity processed?	22
Issuing a deemed permitted boundary activity written notice	24
Deemed Permitted Marginal or Temporary Activities	25
Introduction	25
Criteria for deciding whether an activity should be deemed permitted under section 87BB	26
When can a consent authority deem an activity to be permitted under section 87BB?	27
What information needs to be contained in the written notice?	29
Common features between both types of deemed permitted activities	30

Tables

Table 1 : Comparison of deemed permitted activity processes/features	8
--	---

Figures

Figure 1: Different pathways for deemed permitted boundary activities	11
---	----

Introduction

Purpose of this guide

This guide is designed for professionals who work with resource consent applications. These people are primarily resource consent planners working for consent authorities and consultant planners (who either prepare or process resource consent applications on behalf of consent authorities).

The main purpose of this guide is to help these professionals understand and successfully implement deemed permitted activity processes under sections 87BA and 87BB of the Resource Management Act 1991 (RMA or the Act), brought in by the Resource Legislation Amendment Act 2017 (RLAA17). These sections are in force from 18 October 2017.

This guide provides practical assistance and covers the intent and effect of the new provisions of the RMA.

The guide also has a wider purpose of nationally-consistent implementation. This is necessary so applicants working with various consent authorities can have the same expectations about the new processes. The Ministry for the Environment (the Ministry) also wants to ensure efforts between consent authorities are not duplicated when understanding the changes and implementing them.

This guide has no legal status and is not a legal interpretation of the RMA or RLAA17.

Background and intent of the changes

Before RLAA17, every activity breaching a rule in a district plan, regional plan or NES required resource consent. This was regardless of the extent of the rule breach, level of effect associated with the breach, or if people potentially affected by the activity had provided written approval.

Once the requirement for resource consent was triggered, the RMA set out how the application was to be prepared and assessed. For some consents, the requirements were disproportionate to the level of effects and were costly in terms of time, preparation and processing charges.

While the level of detail in an assessment of environmental effects is required to correspond with the scale and significance of effects, the information and process requirements for a resource consent application can be too onerous for some activities. The 2017 amendments have included three changes, aimed at providing more proportional processes for more straightforward resource consents by:

- introducing a fast-track process for more straightforward resource consents (for controlled district land use consents – this is not covered in this guide)
- allowing consent authorities to deem some activities as permitted in the case of a marginal or temporary rule breach
- providing a new streamlined process for ‘boundary activities’ to follow where the relevant neighbour(s) has provided written approval.

This document addresses the last two of these changes.

When the changes take effect

The consenting provisions of the RLAA17 come in force from 18 October 2017. These changes do not have retrospective effect. This means that applications lodged:

- before 18 October 2017 are subject to the un-amended provisions of the RMA
- on or after 18 October 2017 are subject to the amended requirements of the RMA, as covered in this guide.

Deemed permitted activities at a glance

RLAA17 introduces two new processes that either require, or provide consent authorities the discretion to deem certain proposed activities to be permitted. These activities are exempted from needing to apply for and obtain resource consent, even though a rule(s) in a plan is infringed.

There are two types of deemed permitted activities:

1. *Deemed permitted boundary activities* are ‘boundary activities’¹, where the correct information and written approval of the relevant neighbour(s) is provided.
2. *Deemed permitted marginal or temporary activities* are activities where the consent authority has decided, at their discretion, there is a marginal or temporary rule breach. The effects of the activity must be no different in character, intensity, or scale than they would be in the absence of the rule breach. The adverse effects on any person must be less than minor.

The deemed permitted boundary activity process is mandatory – and must be followed when an application meets the criteria under new sections 87AAB and 87BA. Boundary activities are the construction or alteration of structures, where the relationship of the structure with the property boundaries triggers the need for district land use consent. To be deemed permitted, all neighbours with ‘infringed boundaries’ must provide written approval of the activity. No effects tests are done to either assess the proposed activity, or determine who is adversely affected. New tests are provided instead, which outline when consent authorities must approve boundary activities, and who written approval is required from.

Conversely, the process for deeming a ‘marginal or temporary’ activity to be permitted is entirely at the discretion of the consent authority. Two effects tests need to be met for a proposed activity to qualify. The consent authority must be satisfied; firstly the effects of the activity on the environment are no different in character, intensity, or scale than a permitted activity. Secondly, the consent authority must be satisfied the effects on any person are less than minor. There are no provisions for affected party approval.

The following table provides a comparison between the two deemed permitted activity processes. Where the two processes or features are identical, the row is shaded.

¹ Defined in section 87AAD

Table 1: Comparison of deemed permitted activity processes/features

Features	Deemed permitted boundary activity	Deemed permitted marginal or temporary activity
Eligibility		
Criteria	Activity is a 'boundary activity' with all owners of 'infringed boundaries' providing written approval.	Marginal or temporary breach of rule(s), where effects are indiscernible from if permitted rule(s) had not been breached.
Type of consent	District land use only.	Any type of resource consent, excluding subdivision, as a certificate of compliance is required under sections 223 and 224 (which cannot be applied for once an exemption has been given).
Type of activity	Boundary activities only (must be a district land use rule, or part of a district land use rule).	All activities which breach a permitted activity rule (except subdivision as noted above).
Decision making process		
Lodgement	Information requirements prescribed in the Act, and application form provided in regulations.	No set application process – can occur either through a consent application or on the initiative of the consent authority.
Ability to apply	Yes	No formal ability to apply.
Specific information requirements	Yes	No – but must be sufficient to justify deciding the activity is permitted.
Further information	No provision to request further information	No provision to request further information
Effects assessment	No effects assessment.	Two effects assessments required.
Views of affected persons	Only owners of allotments with an infringed boundary (mandatory requirement).	Not formally relevant.
Consent authority discretion	No discretion – activity is permitted if correct information is supplied.	Full discretion.
Statutory timeframe	10 working days from receipt of information.	No specified timeframe.
Appeals or objections		
Appeal and objection rights	None	None
Administration		
Administrative fees	Fees can be fixed (if a fixed fee is inadequate, section 36 allows actual and reasonable costs to be recovered by councils).	Fees can be fixed (if a fixed fee is inadequate, section 36 allows actual and reasonable costs to be recovered by councils).
Consent authority to keep records	Must be kept (section 35).	Must be kept (section 35).
Written notice that activity is permitted	Required	Required
Lapse period	Must be exercised within five years.	Must be exercised within five years.
Certificates of compliance	Cannot be applied for once an activity is deemed permitted.	Cannot be applied for once an activity is deemed permitted.

Deemed permitted boundary activities

Introduction and key definitions

New sections have been inserted by RLAA17 introducing a different permission process for 'boundary activities'. These activities are now considered as permitted under section 87BA when the correct information (including the written approval of the neighbour with the infringed boundary) is supplied to the consent authority. Several new definitions and terms have been inserted relating to the process. Section 87AAB sets out these new terms and definitions:

Section 87AAB Meaning of boundary activity and related terms

(1) An activity is a **boundary activity** if—

- (a) the activity requires a resource consent because of the application of 1 or more boundary rules, but no other district rules, to the activity; and
- (b) no infringed boundary is a public boundary.

(2) In this section,—

boundary rule means a district rule, or part of a district rule, to the extent that it relates to—

- (a) the distance between a structure and 1 or more boundaries of an allotment; or
- (b) the dimensions of a structure in relation to its distance from 1 or more boundaries of an allotment

infringed boundary, in relation to a boundary activity,—

- (a) means a boundary to which an infringed boundary rule applies;
- (b) if there is an infringement to a boundary rule when measured from the corner point of an allotment (regardless of where the infringement is to be measured from under the district plan), means every allotment boundary that intersects with the point of that corner;
- (c) if there is an infringement to a boundary rule that relates to a boundary that forms part of a private way, means the allotment boundary that is on the opposite side of the private way (regardless of where the infringement is to be measured from under the district plan).

public boundary means a boundary between an allotment and any road, river, lake, coast, esplanade reserve, esplanade strip, other reserve, or land owned by the local authority or by the Crown.

To qualify to be a deemed permitted boundary activity, a proposed activity must meet the following criteria:

- the proposal must require resource consent due to the infringement of one or more boundary rules in a **district plan**
- the proposal must not infringe **any other district rules**
- the infringement must not relate to **public boundaries**
- the owners of all allotments with an infringed boundary have **given written approval** to the proposal, including **signing the site plans**.

If the proposed activity meets the above criteria and the required information is supplied by the applicant (in accordance with s87BA(1)(a) and (b)), the consent authority must give written

notice the activity is permitted, as per section 87BA(1)(c) – being a ‘deemed permitted boundary activity’.

If the proposal does not meet all the criteria noted above, it will not qualify to be a deemed permitted boundary activity, and the applicant will most likely require resource consent to do the activity (noting it may qualify as a deemed permitted marginal or temporary activity if the activity meets the criteria of section 87BB).

If resource consent is required (because it is not eligible for either type of deemed permitted activity, and the activity still meets the definition of ‘boundary activity’) then only neighbours with infringed boundaries can be considered as affected parties under section 95E of the RMA, unless special circumstances apply. Further guidance on the changes to the notification provisions are in the technical guidance, entitled *A Technical Guide to Resource Consent Notification under the Resource Management Act 1991 (resulting from changes made by the Resource Legislation Amendment Act 2017)*.

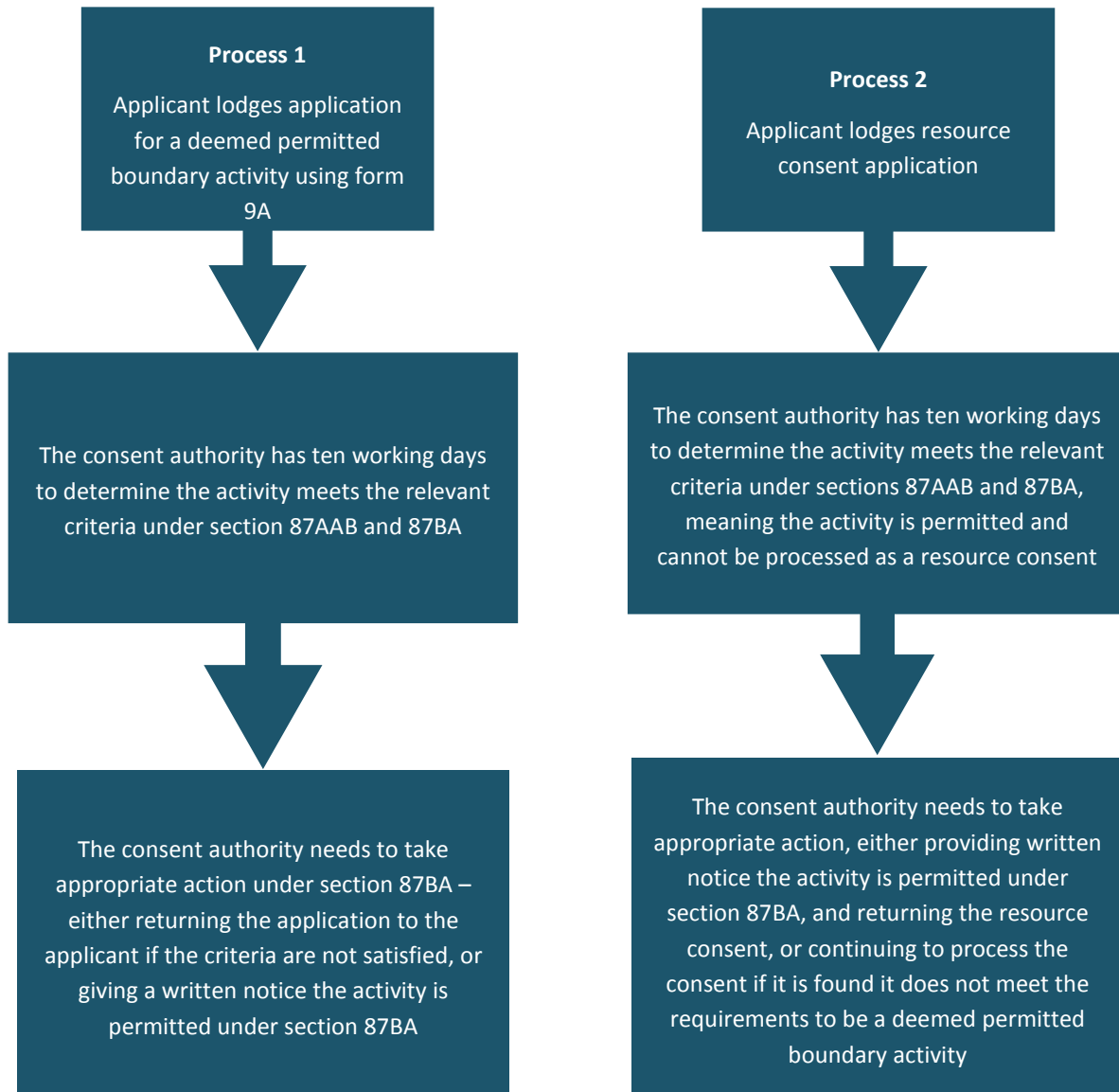
The activity classification of the proposed activity is not relevant for the deemed permitted boundary activity process. The activity status of the infringement triggering the need for resource consent can be for a controlled, restricted discretionary, discretionary or non-complying activity. Deemed permitted boundary activities cannot be prohibited activities, as the proposed activity must require resource consent.

When a consent authority might identify a proposal qualifies as a boundary activity

Consent authorities do not have discretion whether to deem a boundary activity to be permitted if the correct information is supplied (in accordance with section 87BA(1) of the Act). It is intended the process will most often occur as an application for a deemed permitted boundary activity using the application form (form 9A) provided in the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

However, if the consent authority receives a resource consent application meeting the criteria of sections 87AAB and 87BA, it must be treated as a deemed permitted boundary activity, rather than a resource consent as per section 87BA(5). In this instance, the consent authority must not further process the resource consent and the application must be returned to the applicant (once the consent authority is satisfied it meets the requirements to be a deemed permitted boundary activity). There is no need for the applicant to fill out form 9A if they have supplied all information required through the resource consent application (or through any other means). These two processes are shown below in figure 1.

Figure 1: Different pathways for deemed permitted boundary activities



Examples of situations where a consent authority might identify an activity is a ‘boundary activity’ (aside from receiving an application for a deemed permitted boundary activity) are:

- during pre-application meetings/discussions
- once a consent application has been received and the consent authority does its initial check for completeness
- when consideration of a building consent application (or PIM) identifies the need for a resource consent under section 37 of the Building Act 2004
- where a monitoring or compliance inspection identifies an unauthorised boundary activity.

If the consent authority does not give a written notice under section 87BA permitting the activity, the applicant will likely be required to obtain a resource consent (noting it could still meet the criteria to be a deemed permitted marginal or temporary activity).

What timeframes apply to the process?

As noted in the figure above, consent authorities must take appropriate action under section 87BA(2) **within ten days from the date of receipt of the relevant information** outlined in section 87BA. This timeframe applies whether the information is received through an application for a deemed permitted boundary activity, resource consent application, or through any other means. To ensure this timeframe can be met, it is important the consent authority checks for whether any proposed activities are ‘boundary activities’ when they are assessing any district land use consent applications for completeness under section 88 of the RMA. Where possible, it would be good practice to identify ‘boundary activities’ at the pre-application stage.

Section 87BA(2)(b) requires if the applicant has not provided the appropriate information for the consent authority to be satisfied the proposal is a boundary activity, they must notify the applicant and return the application. Likewise, the information will need to be returned if the consent authority determines the activity does not meet the definition for any reason under section 87AAB. When the consent authority receives the information under Section 87BA, either through a resource consent application, form 9A, or any other means, the statutory clock starts. The intent is the processing time for a consent authority to decide on the application starts when the information for the application is received. If the information is insufficient, the application should be returned to the applicant. The clock starts again when all information is received at the council again.

Unlike resource consent applications, there is no ability to suspend the processing (ie, stop the clock) of the deemed permitted activity application for seeking further information or waiting for written approvals. Section 37(1) can however still be used to waive or extend timeframes for this process as appropriate.

The intent of the process is to allow for time and cost savings for both consent authorities and applicants. It is designed to provide permission for boundary activities quickly, and therefore the level of assessment done by the consent authority needs to be proportionate to this process. To achieve this, it is important consent authorities have an effective internal process. This will be further discussed in the latter section of this guidance.

Boundary rules

What types of rules will be subject to the new process?

Many rules in district plans seek to control the position, distance or size of a structure in relation to the boundaries of a site where it is proposed to be located. Adverse effects from the infringement of these boundary rules are generally localised, affecting only the boundary (or boundaries) where the rule is breached (ie the neighbour(s)).

The definition of ‘boundary rule’ in section 87AAB is intended to capture rules where this is the case. The definition does not list specific rules, but is open to include:

“A district rule, or part of a rule, to the extent that it relates to –

- (a) The distance between a structure and 1 or more boundaries of an allotment; or*
- (b) The dimensions of a structure in relation to its distance from 1 or more boundaries of an allotment.”*

Both “structure” and “allotment” are both terms defined in section 2 of the RMA. These definitions are:

Structure means *any building, equipment, device or other facility made by people and which is fixed to land [and includes any raft]*

Allotment has the meaning set out in section 218 of the RMA which is:

- (2) (a) *Any parcel of land under the Land Transfer Act 1952 that is a continuous area and whose boundaries are shown separately on a survey plan, whether or not –*
 - (i) *The subdivision shown on the survey plan has been allowed, or subdivision approval has been granted, under another Act; or*
 - (ii) *A subdivision consent for the subdivision shown on the survey plan has been granted under this Act; or*
- (a) *Any parcel of land or building or part of a building that is shown or identified separately –*
 - (i) *On a survey plan; or*
 - (ii) *On a licence within the meaning of Part 7A of the Land Transfer Act 1952; or*
- (b) *Any unit on a unit plan; or*
- (c) *Any parcel of land not subject to the Land Transfer Act 1952.*
- (3) *For the purposes of subsection (2), an allotment that is—*
 - (a) *subject to the Land Transfer Act 1952 and is comprised in 1 certificate of title or for which 1 certificate of title could be issued under that Act; or*
 - (b) *not subject to that Act and was acquired by its owner under 1 instrument of conveyance— shall be deemed to be a continuous area of land notwithstanding that part of it is physically separated from any other part by a road or in any other manner whatsoever, unless the division of the allotment into such parts has been allowed by a subdivision consent granted under this Act or by a subdivisional approval under any former enactment relating to the subdivision of land.*
- (4) *For the purposes of subsection (2), the balance of any land from which any allotment is being or has been subdivided is deemed to be an allotment.*

These definitions will be applicable to this process, rather than any relevant definitions for structure and allotment contained in the district plan.

The definition does not encompass rules seeking to control the distance or setbacks between two structures, such as between two residential dwellings, or setbacks of buildings from other structures, such as transmission lines.

Because of the broad nature of these definitions, the process is not limited only to urban or residential activities, but could also encompass infringements of structures in other areas or zones, for example rural or industrial areas. This is because the intent of the new process is to address the policy issue where the person with the infringed boundary (or boundaries) has given written approval, the effects on this person are disregarded, but, despite this, a full resource consent process and assessment has still been necessary.

If the boundary where the infringement occurs is a public boundary, this does not qualify as a boundary activity. Public boundary is defined in section 87AAB to mean:

Public boundary means a boundary between an allotment and any road, river, lake, coast, esplanade reserve, esplanade strip, other reserve, or land owned by the local authority or by the Crown.

This aspect of the definition will mean front yard setbacks (distance from the boundary shared with a public road, for example) do not fall within the definition of boundary activity in the RMA.

Examples of rules meeting the definition of ‘boundary rule’

The following are examples of rules the boundary rule definition is intended to encompass:

Type of rule	Example of rule	Policy rationale for being a ‘boundary rule’
Yard setbacks (not including those on a public boundary)	No building or structure shall be located closer than 1.5 metres from a side or rear boundary.	This rule meets the definition of ‘boundary rule’, because it is a district rule relating to the distance between a structure (in this case, a building) and one or more boundaries of an allotment.
Recession plane/height in relation to boundary rules	Buildings shall not penetrate a recession plane which rises vertically for 2.7 metres from ground level at the boundary and then inclines inwards, at 45° to the boundary.	This rule meets the definition of ‘boundary rule’, because it is a district rule relating to the dimensions of a structure (in this case the height of a building) in relation to its distance from one or more boundaries of an allotment.
Building length in relation to boundary	The maximum length of a building within 5 metres of a side or rear boundary shall be 15 metres.	This rule meets the definition of boundary rule because it is a district rule relating to the dimensions of a structure (in this case the length of a building) in relation to its distance from one or more boundaries.
Rules including a ‘part’ meeting the definition of boundary rule, and a ‘part’ that doesn’t	The maximum height for buildings shall be 8 metres, and in addition no part of any building shall protrude through a recession line inclined towards the site at an angle of 35 degrees and commencing at 2.7 metres above ground level at any point on the site boundary.	<p>If an activity infringed the boundary activity aspect of the rule (being the recession line), but not the general height aspect of this rule, then the activity would qualify as a boundary activity.</p> <p>However, if both parts of the rule (the maximum height and recession line) were infringed, the activity would not qualify as a boundary activity. This is because consent is required for an activity that is not a boundary activity.</p>
Fence height rules, where clearly related to the boundary	Any fence or wall, (or combination of these structures), within 1 metre of a side or rear boundary, must not exceed a height of 1.5 metres, measured from the ground level at the boundary.	This rule meets the definition of boundary rule, because it is a district rule relating to the distance between a structure (in this case, a fence or a wall) and one or more boundaries of an allotment.

Examples of rules that would not meet the definition of ‘boundary rule’

The following are types of rules the definition of ‘boundary rule’ is not intended to encompass:

Type of rule	Example of rules	Policy rationale for rule not being considered a ‘boundary rule’
Separation distance between two structures, not involving a boundary of an allotment	A mast (including any antenna attached to a mast) must not be constructed within 20m from the closest wall of a residential building.	The rule does not address the distance between a structure and a boundary of an allotment, but rather addresses the distance between two structures.
Maximum height rules	Buildings must not exceed 16m in height.	The rule does not control the dimension (height) of the structure in relation to the boundary, but rather controls the dimension of the structure, irrespective of where it is on the site.
Separation distance between a structure and a feature, not involving a boundary	No building or structure shall be located closer than 15 metres from: <ul style="list-style-type: none"> (a) the coastal marine area or any other waterbody (b) the edge of the continuous canopy of any significant natural vegetation area (b) the tree line of plantation forestry. 	The rule does not control the distance between a structure and a boundary of an allotment.
Setbacks from zone boundaries, not a boundary of an allotment	A mast (including any antenna attached to a mast) must not be constructed within 10m from a residential or rural zone boundary.	The rule does not control the distance between a structure and the boundary of an allotment.
Site coverage rules	The maximum site coverage shall not exceed 45 per cent of the net site area.	The rule applies to the whole site and does not control the dimension between the structure and the boundary.

Infringed boundaries

What is the definition of ‘infringed boundary’ and who is written approval required from?

‘Infringed boundary’ is a term defined in the RLAA17. As per section 87BA, written approval is only required from owners of allotments with ‘infringed boundaries’. No effects assessment is needed (or provided for) to determine who are ‘affected persons’ broader than these persons. Owner is a term defined in section 2 of the RMA to mean:

- (a) *in relation to any land, means the person who is for the time being entitled to the rack rent of the land or who would be so entitled if the land were let to a tenant at rack rent; and includes –*
- (b) *the owner of the fee simple of the land; and*
- (c) *any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, while the agreement remains in force; and*

in relation to any ship or offshore installation or oil transfer site, has the same meaning as in section 222(2) of the Maritime Transport Act 1994.

Section 87AAB defines ‘infringed boundary’. There are three aspects to this definition, including a general definition, along with further clarification for which boundaries can be considered infringed, when either private ways or corner sites are included in the situation.

The definition of infringed boundary is as follows:

In relation to a boundary activity, -

- (a) means a boundary to which an infringed boundary rule applies;*
- (b) If there is an infringement to a boundary rule when measured from the corner point of an allotment (regardless of where the infringement is to be measured from under the district plan), means every allotment boundary that intersects with the point of that corner;*
- (c) If there is an infringement to a boundary rule that relates to a boundary that forms part of a private way, means the allotment boundary that is on the opposite side of the private way (regardless of where the infringement is to be measured from under the district plan).*

The intent of (b) and (c) is to provide more consistency in who can be considered as having an ‘infringed boundary’ in these situations. Prior to RLAA17, owners of these properties could be considered as affected, as a wider effects assessment is undertaken. However, as the test shifts from a subjective effects determination to an objective test under the ‘infringed boundary’ definition, these aspects to the definition have been included to ensure that in most situations the most relevant neighbour (or neighbours) are providing written approval.

For example, regarding (c), currently some district plans do take measurements from the furthest boundary, however some do not, and this would mean different neighbours are considered infringed in different districts. These aspects of the definition therefore aim to provide more consistency in the application of the boundary activity process, considering the variation in boundary rules in district plans at the moment. The rule will still be measured from the same boundary as the rule in the district plan states, however in all cases the boundary which is the opposite side of the private way will be considered infringed, even if it is not the boundary infringed by the rule under the district plan. More guidance on this is provided in the diagrams below.

The definition of ‘private way’ is included in section 2 of the RMA, which states this has the same meaning as in section 315 of the Local Government Act 1974. The definition provided in this Act is:

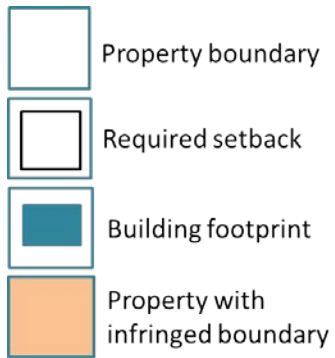
Private way means any way or passage whatsoever over private land within a district, the right to which is confined or intended to be confined to certain purposes or classes or persons, and which is not thrown open or intended to be open to the use of the public generally; and includes any such way or passage as aforesaid which at the commencement of this Part exists within any district.

It is intended this definition captures situations where legal right of ways, entrance strips or access lots are involved.

Because there is no means to put the application on hold while waiting for written approvals like for resource consents, it is important in pre-application discussions, or at the duty planning level, it is explained to the applicant all neighbours with infringed boundaries are identified and written approval provided by them (to avoid having their application returned to them).

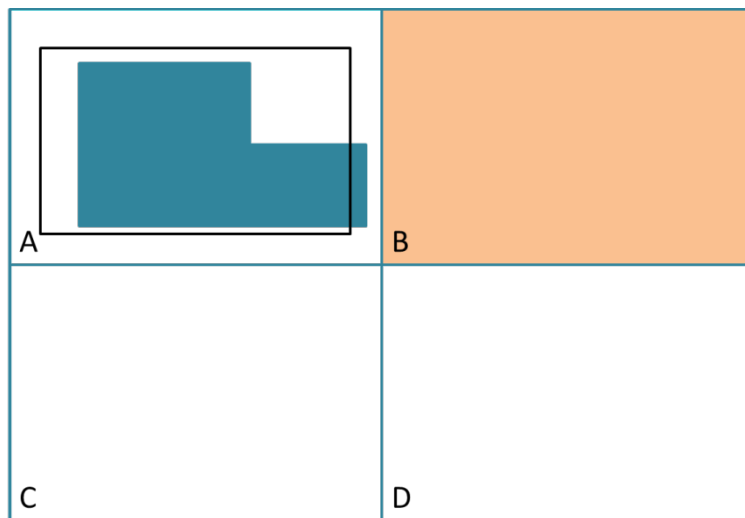
The diagrams below demonstrate different scenarios where (a), (b), or (c) apply and what boundaries would be considered infringed. In all examples, the relevant rule is a 2 metre setback.

Key relevant for all diagrams:



(a) Directly infringed boundaries

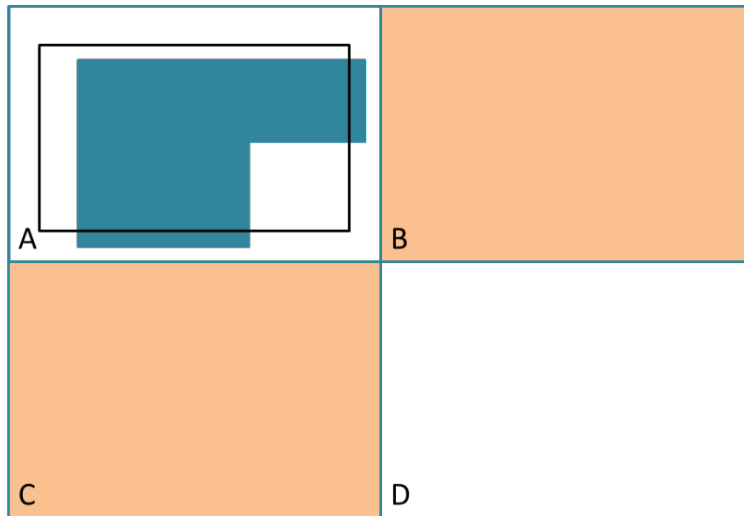
Example 1



Example 1: In this example, the proposed structure in property A breaches the yard setback rule from boundary of allotment B. Written approval would only be required from the owner of allotment B.

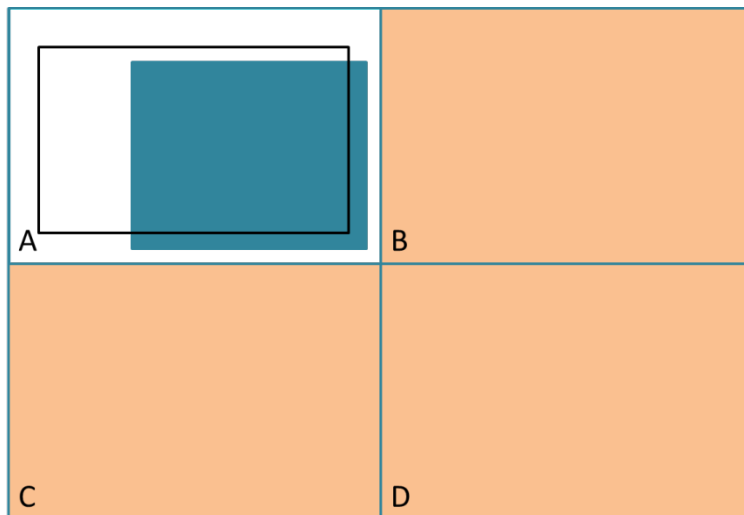
(b) Scenarios that involve corner sites

Example 2



Example 2: In this example, the structure in property A infringes the yard setback rule applying to allotment B and C. It does not infringe the yard setback rule when measured from the corner. Written approval is therefore required from the owners of allotment B and C.

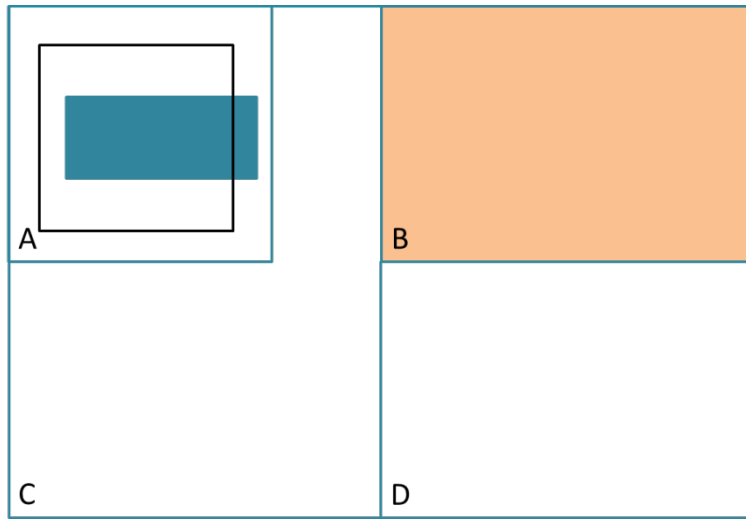
Example 3:



Example 3: In this example, the structure infringes the corner point of B, C, and D. Despite the plan not being clear on whether an infringement can be measured from a corner point, allotment D is considered an infringed boundary under (b).

(c) Private ways

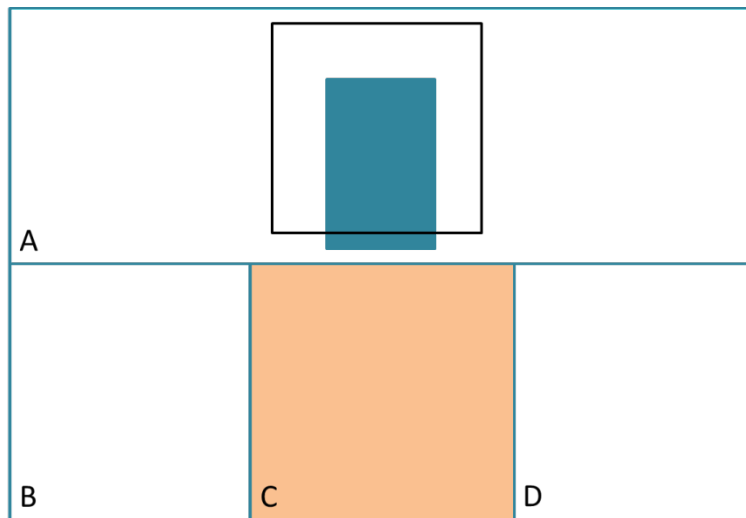
Example 4:



Example 4: In this example, the structure infringes a boundary that forms part of a 'private way'. Because of this, despite the district plan still taking the measurement from the boundary of allotment A, allotment B is the infringed boundary, as this is the boundary on the opposite side of the private way.

(d) Allotment with multiple boundaries

Example 5:



Example 5: In this example, it is intended that as allotment C is the only boundary infringed by the structure in allotment A; C is the only allotment with an infringed boundary.

Information required in a deemed permitted boundary activity application

The RLAA17 sets out specific information requirements to be included in an application for the new process in section 87BA(1). The requirements are considerably less than the current section 88 and schedule 4 for resource consent applications, reflecting that there is no substantive effects-based assessment required for deemed permitted boundary activities.

What information is required under the RMA for a deemed permitted boundary activity application?

An application for a deemed permitted boundary activity must include the following (whether through a resource consent application, form 9A, or through any other means):

- A **description of the activity**; and
- A **plan** (drawn to scale) of the site at which the activity is to occur, showing the height, shape and location on the site of the proposed activity; and
- The full name and address of **each owner of the site**; and
- The full name and address of **each owner of an allotment with an infringed boundary**; and
- **Written approval** from each owner of an allotment with an infringed boundary (form 8B or 8A if lodged as a resource consent) including their signatures on the plan.

All elements required by section 87BA are described in more detail below.

Any fee to cover the fixed charge (if any, set under section 36(1)) must accompany the application. Otherwise, the consent authority need not perform the action to which the charge relates, until the charge has been paid to it in full, under Section 36AAB(2) of the RMA.

1. Administrative fee

Section 36 (administrative charges) has been amended by RLAA17 to allow consent authorities to fix charges 'payable by persons proposing to undertake an activity, for the carrying out by the local authority of its functions in relation to issuing a notice under section 87BA or 87BB stating whether the activity is a permitted activity'. If the consent authority has fixed a charge under this section, it is likely they will require this to be included with the application. Like with resource consents, if the fee has not been paid, the local authority does not need to perform the action to which the charge relates, until the charge has been paid in full as per section 36AAB(2). Although the statutory clock does not stop under the RMA in this instance, these are excluded days under the Resource Management (Discount on Administrative Charges) Regulations 2010.

2. Description of the activity

Importantly, the description of the activity should be in sufficient detail for the consent authority to be satisfied the activity meets the definition of boundary activity under section 87AAB(1). While there is no requirement (like in schedule 4) to note any associated permitted activities, this could be helpful information for the consent authority. The description will need to be in sufficient detail to clearly outline the activity for which a deemed permitted boundary

activity must be issued, noting there is no ability to request further information under section 92.

If they are not satisfied based on the information provided, they must return the application under section 87BA(2)(b)

The application form (form 9A) includes the following details:

- address of the property (including legal address)
- description of proposed activity in sufficient detail for the consent authority to be satisfied the activity is a boundary activity under section 87AAB
- confirmation that a plan (drawn to scale) is attached of the site at which the activity is to occur, showing the height, shape, and location on the site of the proposed activity
- the full name and address of each owner (other than the applicant) of the site to which the proposed activity relates
- the full name and address of each owner of an allotment with an infringed boundary
- confirmation that written approval and signed plans from each owner of an allotment with an infringed boundary is attached.

3. Plan requirements

Section 87BA(1)(a)(ii) requires the plan must be drawn to scale. The plan must be of the site to which the proposed boundary activity is to be done, and must show the *height, shape and location* of the proposed activity.

To show the height, shape and location of the proposed activity, the applicant needs to provide:

- A **location plan** showing the street address of the subject site and accurately identifying neighbouring properties.
- A **site plan** identifying the shape and location (distance) of the proposed structure to any 'infringed boundary'. If the district plan has any other bulk and location rules (such as site coverage), the plan also needs to show it complies with these.
- **Elevation drawings** of all structures to be built or altered, showing the relationship of structures to certificate of title boundaries, and showing the compliance (or lack thereof) with relevant district plan building recession planes etc. In some cases, the plan may also need to include topographical details (both on site and on adjacent sites) to allow for meaningful assessments.

The plan(s) need to be in sufficient detail and be clear to ensure the neighbour(s) providing written approval know what they are agreeing to. It also needs to be in such detail as to ensure the consent authority is satisfied the proposed activity is a 'boundary activity' and it does not infringe on any other district rules. The scale of the plan(s) therefore needs to be sufficient to ensure the boundary rule breaches can be clearly shown.

4. Name and address of owners of the site

The person applying for the deemed permitted boundary activity does not need to be the owner of the site, but needs to be the person proposing the activity on the land.

The application needs to specify the name and address of the person who is making the application, and the name and address of all owners of the property.

5. Identification of owners of properties with infringed boundaries

Under section 87BA(1)(iv) the names and addresses of all registered landowners of properties with infringed boundaries is to be provided with the application. These people may or may not be the occupiers of the properties.

6. Written approvals

Written approval for a boundary rule infringement is required from the *owner(s)* of an allotment with an infringed boundary. This recognises the streamlined nature of the boundary activity process.

A new written approval form is provided in the Resource Management (Forms, Fees, Procedure) Regulations 2003 given the different nature of the process to the current resource consent process (form 8B). It is important to note that unlike for the resource consent process, there is no ability provided in the deemed permitted boundary activity process for the owners of an allotment with an infringed boundary to withdraw their written approval once given. This is made clear on the form, and will need to be explained to people providing written approval if possible (or to the applicant) to ensure they are aware. This has also been noted on the existing form for written approval for a resource consent, ensuring if a deemed permitted boundary activity lodged as a resource consent includes these forms, they can still be used when the boundary activity process is instead followed (noting the plans will still need to be signed).

The two key statutory requirements for information in the written approval are that:

- (d) each owner of an allotment with an infringed boundary –
 - (i) gives written approval for the activity; and
 - (ii) signs the plan referred to in paragraph (a)(ii); and

If the person applying for the deemed permitted boundary activity is the owner of any of the allotments with infringed boundaries, they may provide written approval for these allotments.

How is the deemed permitted boundary activity processed?

Has the correct information been provided?

Once the consent authority has received a boundary rule infringement application, it needs to check the application has the correct statutory information requirements, as outlined in section 87BA(1)(a) and described above. Unlike resource consent applications, the consent authority has no ability to request further information for deemed permitted boundary activities under s92 of the RMA. This means the 10-day statutory clock cannot be stopped in this way (although in certain circumstances, this timeframe can be extended under s37 of the RMA). If the information provided is not sufficient, section 87BA(2)(b) requires the application to be returned. In such cases, we recommend the consent authority provides an explanation as to why the application is incomplete. Please note there are several letter templates (which can be adapted for councils to use) provided in appendix 1 – for processing both types of deemed permitted activities.

Is the activity a boundary activity?

If the required information is provided, the consent authority needs to be satisfied the proposal is a 'boundary activity' as defined section 87AAB of the RMA. To make this judgement, the consent authority needs to check compliance with the relevant rules in the district plan. If the consent authority determines other district rules (that are not boundary rules) are not complied with, the activity does not qualify as a deemed permitted boundary activity. The consent authority must then notify the applicant they require resource consent and return the information supplied. In assessing the information provided, the consent authority needs to confirm the boundaries identified in the application are all of the 'infringed boundaries' (as defined in s87AAB(2) of the Act). If any infringed boundaries and written approvals have been missed, the consent authority must return the application.

Are any boundaries public boundaries?

If any of the boundary rule infringements are with a public boundary (defined in section 87AAB as "a boundary between an allotment and any road, river, lake, coast, esplanade reserve, esplanade strip, other reserve, or land owned by the local authority or by the Crown"), then the activity does not qualify for a deemed permitted boundary activity – and the consent authority must notify the applicant they require resource consent and return the application.

Are written approvals complete and adequate?

Once the consent authority has determined what/where the infringed boundaries are, it is important to check the written approvals supplied are complete and adequate. Key questions to ask in doing this assessment are:

- Are the approvals from the correct owners (all registered landowners) of each of the allotments with an infringed boundary?
- Has the written approval form been signed and dated?
- Has the plan(s) been signed by all owners with infringed boundaries?
- Is this plan(s) the same as the plans received by the consent authority. For example, is it the current version, as part of the deemed permitted boundary activity application?
- If the proposal has been amended in any way, check those who have provided written approval know and approve of the amendments.
- Are the approvals unconditional? Conditional approvals cannot be accepted.

If there are any deficiencies in the written approvals, the consent authority must notify the applicant they are not satisfied the information provided meets the requirements and return the information supplied.

It is at the council's discretion as to whether they carry out a site visit. The council may decide to do a site visit to ensure that the information provided by the applicant is accurate.

If the proposal is for a boundary activity, the necessary information has been provided and along with all the correct written approvals, the consent authority must prepare the exemption notice and issue it to the applicant (section 87BA(2)) within 10 working days.

Issuing a deemed permitted boundary activity written notice

Once the consent authority is satisfied the activity is a boundary activity and all the owners with infringed boundaries have provided their written approval, the consent authority must give a written notice to the applicant stating the activity is permitted. This notice is the only 'decision document' required. There is no requirement to produce any other reports evaluating or assessing the boundary activity. The written notice needs to be issued within 10 working days of receipt of the application.

A written notice template is provided in the Resource Management (Forms, Fees and Procedure) Regulations (form 9B). The notice cannot include conditions under section 108 of the RMA. Advice notes could however be included to provide further guidance or information to the applicant. Examples of advice notes could include:

- Other permissions, such as a building consent approval may be required under the Building Act 2004, prior to the start of construction.
- Other requirements under the RMA, for example, regional resource consents, may be required from the regional council.

What can the applicant do if their deemed permitted boundary activity application is refused?

If the consent authority decides the application does not meet the requirements for a deemed permitted boundary activity, it cannot deem the proposed activity to be a permitted activity under section 87BA. The consent authority must return the information to the applicant. We recommend this include the reason(s) as to why the written notice has not been given.

If the written notice is not given, the applicant could take one of the following options.

- Remedy any technical deficiencies in the application and make a further application. The applicant might do this if the activity was not excluded as a boundary activity, but some information required was missing (for example, not all infringed boundaries had been identified in the original request, or a written approval was missing or incomplete).
- Modify the proposal to ensure it is a boundary activity, get new written approvals and make a further application. An example of this would be where the original proposal infringed a public boundary, but could be modified so no public boundaries were involved.
- Submit a resource consent application for the proposal.

Deemed permitted marginal or temporary activities

Introduction

Any non-compliance with the rules and requirements in a planning instrument under the RMA triggers the need for a resource consent. However, due to the effect-based nature of plans, some activities can require resource consent, despite the activity having effects indiscernible from a permitted activity. The breach of the rule is therefore technical in nature, rather than relating to the adverse effects of the activity.

RLAA17 has introduced a discretionary power for consent authorities to waive the requirement for resource consent on a case-by-case basis in the instance identified above. Activities eligible to be 'deemed permitted' are those having adverse effects indiscernible from those allowed by permitted activities. These activities would have been granted a resource consent on a non-notified basis. Two effect tests must be met for activities to qualify, which will be elaborated in more detail below. This is intended to save time and costs for both consent authorities and applicants.

The policy intent is consent authorities will most often use this tool when they already have the information necessary to decide this (eg, when a resource consent application is made or when building consent checks are made under section 37 of the Building Act 2004).

There are no formal application process and/or information requirements prescribed in RLAA17 for deemed permitted marginal or temporary activities, and there is no formal ability for an interested party to apply to the consent authority. Unlike deemed permitted boundary activities, there is no obligation for a consent authority to accept or consider a request for a marginal or temporary exemption. However, RLAA17 does not prevent consent authorities from establishing their own procedures for determining these deemed permitted activities. We therefore strongly recommend an internal guidance or policy is developed as soon as possible, to provide a framework for the officers to make decisions.

What timeframes apply to the process?

Unlike the deemed permitted boundary activity process, there are no statutory deadlines for considering whether an activity is a deemed permitted marginal or temporary activity. The general duty to avoid delay under section 21 however applies, as do the new procedural principles contained in section 18.

Section 21 states:

Every person who exercises or carries out functions, powers, or duties, or is required to do anything, under this Act for which no time limits are prescribed shall do so as promptly as is reasonable in the circumstance.

Section 18A states:

Every person exercising powers and performing functions under this Act must take all practicable steps to –

- (a) Use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised;*

If a resource consent application has been lodged and the consent authority is deciding whether to permit the activity under s87BB, the timeframes for deciding on the resource consent will continue until the resource consent application is returned, pursuant to s87BB(4) of the Act, and a written notice issued under s87BB(3) of the Act. There is no formal ability to put the consent on hold in this situation, while the consent authority is making this decision.

Criteria for deciding whether an activity should be deemed permitted under section 87BB

If the consent authority has decided to consider if a proposed activity might be a deemed permitted marginal or temporary activity, it must evaluate whether the activity meets the statutory criteria set out in s87BB:

S87BB Activities meeting certain requirements are permitted activities

(1) *An activity is a permitted activity if –*

- (a) *The activity would be a permitted activity except for a marginal or temporary non-compliance with requirements, conditions, and permissions specified in this Act, regulations (including any national environmental standard), a plan, or a proposed plan; and*
- (b) *Any adverse environmental effects of the activity are no different in character, intensity, or scale, than they would be in the absence of the marginal or temporary non-compliance referred to in paragraph (a); and*
- (c) *Any adverse effects of the activity on a person are less than minor; and...*

It is intended only activities that infringe permitted activity rules are those deemed permitted under section 87BB.

What constitutes a ‘marginal’ or ‘temporary’ non-compliance under S87BB(1)(a)?

The first assessment a consent authority needs to make is whether there is a ‘marginal’ or ‘temporary’ non-compliance with a rule.

An activity may require a resource consent due to rules in a national environmental standard or rules in a proposed or operative district or regional plan. Rules requiring resource consent are of two basic types:

- rules identifying certain types or classes of activities are permitted, or otherwise, in a particular area or zone
- rules identifying activities must meet particular standards to be permitted (or to require a particular class of consent).

It is the policy intent that most commonly, deemed permitted marginal or temporary activities will be provided for the latter of these.

The term marginal is a new term introduced by RLAA17. It has not been defined in the legislation. It relates to the degree of non-compliance with the relevant rule(s), rather than the impact of the non-compliance. In the context of deemed permitted marginal or temporary activities, the policy intent is marginal is to mean barely exceeding minimum requirements. It will be easier to meet the ‘marginal’ threshold when rules include a numerical basis, rather than those with a qualitative or list basis.

Temporary is intended to mean of a short duration rather than less than permanent. The length of 'temporary' needs to be considered on a case-by-case basis.

The way these terms are applied will depend on the context of the situation. As these terms are not defined, there is flexibility to apply these appropriately, on a case-by-case basis.

Adverse environmental effects of the activity are no different in character, intensity, or scale

The second assessment relates to the adverse effects of the activity being no different in character, intensity, or scale than they would be in the absence of the marginal or temporary non-compliance. The test uses similar wording as section 20A(1)(b) of the Act, in relation to existing use rights, but however is stricter in nature.

The intent of the high threshold is that activities will only be deemed permitted under section 87BB where the adverse effects of the activity are indiscernible from those allowed by a permitted activity in the plan.

Any adverse effects on a person are less than minor

The third assessment consent authorities must do is to determine whether effects on any person are less than minor. 'Less than minor' is the threshold currently used in s95E, however there are some differences between the two sections. Section 87BB does not include the permitted baseline consideration (s95E(2)(a)), limit the consideration for controlled or restricted discretionary activities (s95E(2)(b)), or require regard to be had to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11 (95E(2)(c)).

Unlike for the 95E test, there is also no formal ability for consent authorities to disregard effects on a person who has given written approval for the activity.

When can a consent authority deem an activity to be permitted under section 87BB?

Section 87BB(2) of RLAA17 sets out broad scope for when consent authorities could choose to deem an activity be permitted under this section. This section sets out that:

(2) a consent authority may give notice under subsection (1)(d) –

(a) after receiving an application for a resource consent for the activity; or

(b) on its own initiative.

This provides considerable flexibility to consent authorities for when they can use the provisions. The key constraints around its use relate to consent authority having sufficient certainty regarding the proposal, to assess it against the relevant effects tests and provide an adequate description in the notice (required by section 87BB(3)).

A consent authority can deem an activity be permitted under section 87BB relating to rule infringements under a regional plan, a district plan, or an NES. However, subdivisions cannot be deemed permitted under this section, as once this has occurred, a certificate of compliance cannot be granted (which is required under section 223 and section 224).

The ability for consent authorities to deem an activity be permitted under this section is entirely discretionary, as provided in section 87BB(2). There is no requirement for consent authorities to deem an activity be permitted under this section, even if they meet the

criteria/tests in section 87BB (outlined above). In making its decision, we recommend the consent authority consider whether:

- it is best use of its resources to continue to address the matter by requiring and/or processing a resource consent application
- if the decision is customer focused
- not issuing the written notice is causing unreasonable delay
- the effects of the activity can be adequately assessed and recorded in the written notice
- the activity requires any conditions to be attached to it to manage adverse effects (noting conditions cannot be attached to a written notice).

Examples of potential situations when a consent authority could consider whether to provide a marginal or temporary consent exemption include:

- When an application for *a resource consent is lodged* with the consent authority. During the s88 completeness check, the consent authority might determine the proposed activity meets the requirements of s87BB. If this is the case, the consent authority can decide whether to issue a written notice, instead of continuing to process the resource consent application. Alternatively, the consent authority may make this determination after they have conducted a site visit. If the consent authority decides to issue the written notice, then they must return the resource consent application (section 87BB(4)).
- When a *building consent application is received* and the consent authority identifies under s37 of The Building Act 2004 that resource consent is required. The consent authority could decide it has sufficient information to assess if the activity could be considered as a deemed permitted activity. If so, they could inform the applicant they are prepared to consider the proposal on this basis.
- When *pre-application meetings/discussions* are held, the consent authority may, upon receiving preliminary information regarding a proposal, consider the proposed activity meets the criteria under section 87BB. The consent authority could inform the applicant they are prepared to consider the proposal on this basis.
- When *a specific request is received by an applicant wanting to undertake an activity* seeking that their application be a deemed permitted marginal or temporary activity under section 87BB. If sufficient information is provided, the consent authority could agree at its discretion to consider it on that basis.

The intent of these new provisions is to expedite processing of what would be very simple resource consents. The process is intended for situations where notification and section 104 assessments are not necessary to assess the environmental effects of the proposed activity. If the circumstances mean the consideration is going to take a similar amount of time and assessment as processing a consent application, the activity is most likely not appropriate. Additionally, if there is a need to impose conditions, it is a clear indication deeming the activity be permitted under section 87BB should not be considered. This is particularly important for regional consents, which often involve public good resources such as water, where conditions are often required to mitigate any potential adverse environmental effects. It will therefore need to be very straightforward regional activities that are deemed permitted under section 87BB. It is at the council's discretion as to if they carry out a site visit. The council may decide to do a site visit to ensure the information provided by the applicant is accurate.

We recommend consent authorities have an effective internal guidance or policy in place. This will provide a framework to ensure minimal administration burden and good decision making. We also recommend the process of assessing these types of deemed permitted activities is

procedural, and justifiable. The consent authority may want to include information for the processing staff, such as managing community expectations of deemed permitted marginal or temporary activities in their internal policy. It is acknowledged there could be pressure from the community to deem activities to be permitted under section 87BB, despite the consent authority having full discretion, so this type of communication would be helpful in these situations.

What information needs to be contained in the written notice?

If the consent authority decides to provide written notice that an activity is permitted under section 87BB, it must do so by notifying the person proposing to undertake the activity. This notice must be in writing and include (s87BB(3)):

A description of the activity; and

- (a) Details of the site at which the activity is to occur; and*
- (b) The consent authority's reasons for considering the activity meets the criteria in subsection (1)(a) to (c), and the information relied on by the consent authority in making that decision.*

Like for deemed permitted boundary activities, this is the only decision document or report required. The format for the notice is provided in the Resource Management (Forms, Fees, Procedure) Regulations 2003 (form 9C).

It is important the content of the notice is proportional to the process for deemed permitted activities. Some level of assessment does need to be given however of the consent authority's reasons for considering the proposed activity meets the criteria in s87BB.

The notice will need to include an explanation as to how the rule breach is 'marginal or temporary', how the effects are 'no different in character, intensity or scale' and how the effects on a person(s) are less than minor.

Information relied upon by the consent authority could include:

- plans (site plans, elevation plans)
- an assessment of environmental effects
- any other information supplied by the applicant
- information gained through a site visit
- information gained through other council records or knowledge.

The notice cannot include conditions, but the notice could include advice notes. Examples of this could include:

- a building consent may be required under the Building Act 2004 prior to the commencement of construction
- additional approvals, in the form of resource consents may be required from a regional council (if a written notice was given by a territorial authority).

If the consent authority decides it is not appropriate to deem an activity be permitted under section 87BB (due to the activity not meeting the criteria in 87BB, or because the consent authority needs to make further assessments of the proposal, or would like to attach conditions to the application), then resource consent is required. Whether the person wishing to carry out the activity needs to be notified of this decision is dependent on the process the

consent authority has been through with the applicant to get to that stage. If the person wishing to carry out the activity is unaware the consent authority assessed whether it meets the criteria outline in s87BB, no response is necessary, and the normal resource consent process is done. However, if the applicant has specifically requested consideration of the proposal in terms of the section 87BB provisions, the consent authority may need to notify the applicant of the decision not to use their discretionary power to permit the activity in that case.

Common features between both types of deemed permitted activities

There are several common features between the two types of deemed permitted activities, discussed in the sections below. Note also a high-level comparison between the two types of deemed permitted activities (and the features they have in common) is provided on page 7-8 of this guide.

Delegations

Both processes provide for a permission which would otherwise require resource consent. The intention is to provide for a more streamlined process, where this full assessment is not required. For this reason, it is important the decisions are made at an appropriate level. It would be suitable that delegations for deciding on deemed permitted activities under section 87BA(2) or 87BB(1)(d) should be made by a person delegated to make decisions on non-notified resource consent applications. As the purpose of both processes is to provide a more efficient way of dealing with these consents, it is appropriate they are considered under delegation by staff, rather than council committee.

Appeal and objection rights

There are no appeal or objection rights provided for either type of deemed permitted activity. If a person's application for either a deemed permitted boundary activity (or a request for a deemed permitted marginal or temporary activity) is not given, they can still apply for a resource consent. This will not prejudice their chances of their application being granted.

Lapse periods

For both types of deemed permitted activities, the written notice must be given effect to within five years of notice of it being given. This aligns with section 125 of the RMA for resource consents. However, there is no ability provided to alter or extend this lapse period. As with resource consents, there is no provision in RLAA17 for deemed permitted boundary activities which would make the written notice invalid, if the neighbour who has provided their written approval changes in the five-year period allowed.

Administrative fees

Consent authorities can fix administrative fees for both types of deemed permitted activities under section 36(1)(ae). In setting these fees, the consent authority should consider the intent of deemed permitted boundary activities, being to provide a more proportional, efficient and cost-effective way of providing permissions for particular activities.

No ability to request further information

As previously noted in this guide, consent authorities cannot request further information for either types of deemed permitted activities under section 92 of the RMA. However, consent authorities could still informally approach the applicant for further clarification if they wish.

Certificates of compliance

Once an activity has been deemed permitted under either process, a certificate of compliance cannot be applied for as per 139(8A).

Recording deemed permitted activities and monitoring

Section 35 of the RMA has been amended to require records are kept of both types of deemed permitted activities. As deemed permitted activities are providing a permission which stands in place of a resource consent, it should be recorded in the council property records in the same way as a resource consent.

If a person applies for a land information memorandum under s44A(1) of the Local Government Official Information and Meetings Act 1987, information concerning any deemed permitted activity should be included in the memorandum provided.

While written notices for deemed permitted activities cannot include monitoring conditions, in many cases they will relate to structures requiring building consents. There is no specific provision in section 36 to allow consent authorities to charge for the monitoring of deemed permitted activities under section 87BA or section 87BB. Records of deemed permitted activities could also help inform any plan efficiency and effectiveness monitoring undertaken under section 35.

We expect there will be monitoring requirements for deemed permitted activities in the National Monitoring System (NMS) for the 2018/2019 data set. The inclusion of the deemed permitted activities and the specific data sought is subject to Ministerial approval. However, it is likely the NMS would be seeking similar information to information requirements for resource consents.

Permitted baseline and existing environment

Any consideration of the permitted baseline, for example under section 95D(b), 95E(2)(a) and section 104(2), only captures activities permitted by a rule in a district or regional plan, or a National Environmental Standard. As a deemed permitted activity is determined on a case by case basis and is not an activity permitted by a rule or an NES, it will not form part of the statutory permitted baseline under the RMA. Likewise, deemed permitted boundary activities under section 87BA will also not form part of the permitted baseline.

However, an activity deemed a permitted activity by a consent authority under section 87BB(1)(d) or permitted under section 87BA(2) will form part of the existing environment (which applies to the site and surrounding environment). Case law has determined the existing environment includes the environment, as it might be modified by unimplemented resource consents likely to be implemented. Activities deemed permitted under section 87BB(d) or 87BA(2) will therefore likely need to be taken into account by decision-makers in this manner under section 95D and section 104.

It is the intent that current practice around bundling continues to be applied to deemed permitted activities. If an activity has been deemed permitted, and this activity changes, a consent authority will need to use their discretion on a case by case basis as to if resource consent is required for only the new activity, or the activity as a whole.

Appendix 1: deemed permitted activities template letters

Letter A	Acknowledgement/acceptance letter (deemed permitted boundary activity)
Letter B	Letter to advise a person that a deemed permitted boundary activity can be considered (generated during the building consent check)
Letter C	Return letter (for deemed permitted boundary activity application)
Letter D	Confirmation letter (for boundary activity)
Letter E	Confirmation letter (for deemed permitted marginal or temporary activity)

[Letter A – Acknowledgement/ acceptance letter]

Date

Name

Address

Dear Name

DEEMED PERMITTED BOUNDARY APPLICATION – ACCEPTANCE

Application number(s):

Applicant:

Address:

Proposed activity(s):

Thank you for your deemed permitted boundary activity application which we received on date.

We will process this application, as per the requirements of Section 87BA of the Resource Management Act 1991 (RMA).

If a site visit is required:

We will/may undertake a site visit, as part of the processing of this application. If there are any obstacles (ie, locked gates or dogs) that I should be aware of, please contact me to arrange access or to discuss a suitable time for me to visit.

Within 10 working days from [date application was received], we will either issue a notice in writing under Section 87BA(1)(c) of the RMA permitting your activity, or if your activity does not meet the criteria to be a deemed permitted boundary activity, we will notify you in writing and return the information.

Fees

If the fixed fee covers all processing costs:

The fee that you have paid is a fixed fee and covers all of our work on your application.

If you have any queries, please contact me on phone number and quote the application number above.

If the fixed fee does not cover all processing costs:

Please note the fee you have paid is a deposit towards the cost of our work on your application. We recover insert % of costs from applicants, with the remainder being subsidised from rates. If your deposit does not cover the total cost, minus this subsidy, we will advise you of this and provide a separate invoice.

Yours sincerely

Name

Position

[Letter B – Letter generated during the building consent check to advise the applicant that a deemed permitted boundary activity application could be applied for]

Date

Name

Address

Dear Name

LETTER ADVISING OF RESTRICTIONS ON COMMENCING BUILDING WORK BEFORE OBTAINING APPROVAL UNDER THE RESOURCE MANAGEMENT ACT 1991

The [name of council] Council's [planning unit] has reviewed your building consent application [application number] for the work referred to in the attached project information memorandum. The review is to ensure the proposed activity has met the requirements under the Resource Management Act 1991 (RMA) and the District Plan. Unfortunately, the proposed activity referred to in the above-mentioned building consent application does not comply with all the relevant rules and requirements under the District Plan.

Therefore, the proposed activity is required to have the following resource consents under the RMA:

[list resource consent(s) required, and reasons why]

As these resource consent(s) will or may materially affect the building work to which the attached project information memorandum relates, until they have been granted *no building work may proceed/*building work may only proceed to the extent stated below:

[list conditions/requirements]

Failure to comply with the requirements of this notice may result in legal action being taken against you under the RMA.

However, we have determined this activity may meet the deemed permitted boundary activity requirements of section 87BA of the RMA. An application for a deemed permitted boundary activity can be processed if you provide the Council's planning unit with the following information as is required under Section 87BA(1)(a) and (b) of the RMA, using form 9A (or name of council form):

- a description of the activity
- a plan (drawn to scale) of the site at which the activity is to occur, showing the height, shape and location on the site of the proposed activity
- the full name and address of each owner of the site
- the full name and address of each owner of an allotment with an infringed boundary and
- each owner of an allotment with an infringed boundary gives written approval for the activity and signs the plan referred to in the second bullet point above.

The deemed permitted activity application will be processed in 10 working days after the date on which we receive the information stated above.

Please note if all the information in the bullet points is not provided and/or if the proposed activity breaches other rules (other than boundary rules under section 87AAB of the RMA) a resource consent application (separate to a building consent application) will need to be lodged with the Council.

You can find further information about the steps that make up the resource consent process on our website and the deemed permitted boundary activity process at [\[include link\]](#).

Please also note the fee you have paid is for the lodgement fee of the building consent application. A separate application fee \$X for the resource consent application or deemed permitted boundary activity will be required.

If you have any queries, please contact me on [phone number](#) and quote the application number above. You can also make an appointment with our duty planner any week day between 9.00am and 5.00pm. They provide half an hour of free information which you may find useful.

Yours sincerely

[Name](#)
[Position](#)

[Letter C – Return letter for deemed permitted boundary activity application]

Date

Name

Address

Dear Name

DEEMED PERMITTED BOUNDARY ACTIVITY APPLICATION AT ADDRESS – RETURNED

Application number(s):

Applicant:

Address:

Proposed activity(s):

Thank you for your deemed permitted boundary activity application, which we received on date. We have assessed your application against the requirements of Section 87BA (1)(a) and (b) of the Resource Management Act (1991). This section sets out the information required for a complete deemed permitted boundary activity application. Unfortunately, your application is incomplete because it does not contain the following information OR your proposed activity is not a boundary activity for the following reasons*:

*choose one

EITHER:

[List information that is missing which could include:

- a description of the activity
- a plan (drawn to scale) of the site at which the activity is to occur, showing the height, shape and location on the site of the proposed activity
- the full name and address of each owner of the site
- the full name and address of each owner of an allotment with an infringed boundary
- each owner of an allotment with an infringed boundary gives written approval for the activity and signs the plan referred to in the second bullet point above.]

To progress from here, we need the information listed above before we can provide a notice in writing regarding your application. You can find further details on our website at [include link about the information requirements for deemed permitted boundary activity application].

OR:

[List reason(s) that the proposed activity is not a boundary activity under section 87AAB]

To progress from here, you will need to apply for a resource consent if you wish to proceed with your proposed activity. You can find further details on our website at [include link about the information requirements for deemed permitted boundary activity application].

You can also make an appointment with our duty planner any week day between 9.00 am and 5.00 pm. They provide half an hour of free information which you may find useful.

If you decide to re-lodge this application or make a new application including the above information, it will be treated as if it were a new application.

To date we have spent enter total time checking your application, and a total of \$ amount of your initial fee has been used. If you re-lodge the application, please include an additional \$ amount to make up the balance of the initial fee, which is \$ amount. If you decide not to resubmit your application, please contact us on phone or email, to receive a refund of the unused portion of the initial fee.

If you have any queries, please contact me on phone number and quote the application number above.

Yours sincerely

Name
Position

[Letter D – Confirmation letter (for deemed permitted boundary activity)]

Date

Name

Address

Dear Name

CONFIRMATION LETTER FOR DEEMED PERMITTED BOUNDARY ACTIVITY

Application number(s):

Applicant:

Address:

Proposed activity(s):

EITHER

If received as a deemed permitted boundary activity application:

Thank you for your deemed permitted boundary activity application which we received on date. The consent authority is satisfied that the proposed activity described above meets the requirement of sections 87AAB and 87BA of the Resource Management Act 1991 (RMA) and is therefore a permitted activity under Section 87BA(1) of the Act.

OR

If the application was originally received as a resource consent application:

Thank you for your resource consent application [application number] which we received on date. Under Section 87BA of the RMA, the proposed boundary activity on your site is deemed to be a permitted activity, and therefore, a resource consent is not required.

A copy of the written notice is attached, which confirms that the boundary activity is a permitted activity. Please note that any changes to the activity, as described in the notice, may trigger the requirement for a new resource management approval from the consent authority.

Fees

If the fixed fee covers all processing costs:

The fee that you have paid is a fixed fee and covers all our work on your application. Fixed fees are non-refundable.

If the fixed fee does not cover all processing costs:

Please note the fee you have paid is a deposit towards the cost of our work on your application. We recover insert % of cost recovery of costs from applicants, with the remainder being subsidised from rates. The deposit that you have paid does not cover the total cost, minus this subsidy. Attached is the invoice for the difference.

Or if there is a refund of fee:

The total cost of processing is X and therefore is less than the deposit you have paid. Therefore, you will be given a refund. Please provide us your bank details so we can arrange to refund part of the deposit.

Lapse Period

It is important to note that a notice given under section 87BA(c) lapses 5 years after the date of the notice unless the activity permitted by the notice is given effect to.

If you have any queries, please contact me on phone number and quote the application number above.

Yours sincerely

Name
Position

[Letter E – Confirmation letter – deemed permitted marginal or temporary activity]

Date

Name

Address

Dear Name

CONFIRMATION LETTER FOR DEEMED PERMITTED MARGINAL OR TEMPORARY ACTIVITY

Application number(s):

Applicant:

Address:

Proposed activity(s):

EITHER

If issued at the time of building consent check:

The [name of Council] Council's [planning unit] has reviewed your building consent application/or proposal to ensure the proposed activity meets the requirements under the Resource Management Act 1991 (RMA) and the District Plan. The proposed activity does not meet the following District Plan/Regional Plan/National Environmental Standard rules:

- [Outline non compliance with the rules of the relevant planning documents]

In normal circumstances, any non-compliance with rules and requirements under the RMA or a planning document will trigger the need for a resource consent. However, pursuant to section 87BB of the RMA, the Council has discretion to waive the resource consent requirements for the proposed activity on your site. We have determined your application [insert application number] meets these tests and is therefore permitted under this section and does not require resource consent.

OR

If a resource consent application has been received

Thank you for your resource consent application which we received on date. Pursuant to section 87BB of the RMA, the Council has discretion to waive the resource consent requirements for the proposed activity on your site. We have determined that your application [insert application number] meets these tests and is therefore permitted under this section and does not require resource consent.

OR

[Describe any other way the council has decided to deem the activity to be permitted under section 87BB (2)(b)]

A copy of the notice, which confirms the activity is a deemed permitted marginal or temporary activity under section 87BB of the RMA, is attached. This notice describes the proposed activity

and location, relevant details of the site, the relevant information the Council relied on to make our decision, and outlines the Council's reasons for considering the activity meets the relevant criteria of Section 87BB of the Act.

Please note any changes to the activity, as described in the notice, may trigger the requirement for a new resource management approval from the consent authority.

Fees

If the fixed fee covers all processing costs:

The fee you have paid is a fixed fee and covers all our work on your application. Fixed fee are non-refundable.

If the fixed fee does not cover all processing costs:

Please note that the fee you have paid is a deposit towards the cost of our work on your application. We recover insert % of cost recovery of costs from applicants, with the remainder being subsidised from rates. The deposit that you have paid does not cover the total cost, minus this subsidy. Attached is the invoice for the difference.

Or if there is a refund of fee

The total cost of processing is X and therefore is less than the deposit you have paid. Therefore, you will be given a refund. Please provide us your bank details so that we can arrange to refund part of the deposit.

Lapse Period

It is important to note a notice given under subsection 1(d) lapses 5 years after the date of the notice unless the activity permitted by the notice is given effect to.

If you have any queries, please contact me on phone number and quote the application number above.

Yours sincerely

Name
Position